(15,525.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 656.

WILLIAM M. FISHBACK ET AL., APPELLANTS,

vs.

THE WESTERN UNION TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 14, 1894.

1 Be it remembered that on the second day of January, 1894, came into the office of the clerk of the circuit court of the United States in and for the western division of the eastern district of Arkansas The Western Union Telegraph Company, by Rose, Hemmingway & Rose, Esq., its solicitors, and filed therein its bill of complaint against William M. Fishback *et al.;* which bill of complaint is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

THE WESTERN UNION TELEGRAPH COMPANY
v.
WILLIAM M. FISHBACK *et al.*

To the judges of said court in chancery sitting:

Your orator, The Western Union Telegraph Company, which is a corporation created by and organized under the laws of the State of New York, brings this suit against William M. Fishback, Henry B. Armistead, and Charles B. Mills, constituting the board of railroad commissioners for the State of Arkansas; J. W. Allen, county clerk of the county of Arkansas, in the said State; R. R. Radford, county clerk for the county of Ashley, in said State; B. F. Langston, county clerk for the county of Bradley, in said State; T. N. Means, county clerk for the county of Calhoun, in said State; Charles L. Mead, county clerk of the county of Chicot, in said State; A. W. Wilson, county clerk of the county of Clark, in said State; B. B. Biffle, county clerk of the county of Clay, in said State; Woodson Moseley, county clerk of the county of Cleveland, in said
2 State; D. H. Smith, county clerk of the county of Columbia, in said State; J. C. Massey, county clerk of the county of Conway, in said State; C. M. Anderson, county clerk of the county of Craighead, in said State; P. D. Scott, county clerk of the county of Crawford, in said State; Samuel Keel, county clerk of the county of Crittenden, in said State; J. M. Levesque, county clerk of the county of Cross, in said State; N. A. Clark, county clerk of the county of Dallas, in said State; W. W. Quilling, county clerk of the county of Desha, in said State; R. L. Hardy, county clerk of the county of Drew, in said State; E. M. Morgan, county clerk of the county of Faulkner, in said State; T. C. Moore, county clerk of the county of Franklin, in said State; J. R. Miller, county clerk of the county of Greene, in said State; J. Ford Johnson, county clerk of the county of Hempstead, in said State; W. W. Dutton, county clerk of the county of Hot Spring, in said State; W. E. Bevens, county clerk of the county of Independence, in said State; George A. Lockard, county clerk of the county of Jackson, in said State; C. E. Greenfield, county clerk of the county of Jefferson, in said State; H. L. Bunch, county clerk of the county of Johnson, in said State; B. P. Wheat, county clerk of the county of La Fayette, in said State; J. H. Sloan, county clerk of the county of Lawrence, in said

State; W. W. Foreman, county clerk of the county of Lee, in said State; H. D. Avery, county clerk of the county of Lincoln, in said State; W. H. Loman, county clerk of the county of Lonoke, in said State; J. V. Scott, county clerk of the county of Miller, in said State; J. A. Garrett, county clerk of the county of Monroe, in said State; Alex. Vaughan, county clerk of the county of Nevada, in said State; W. P. Cawthon, county clerk of the county of Ouachita, in said State; J. C. Rembert, county clerk of the county of Phillips,
in said State; A. A. Coppage, county clerk of the county of
3 Poinsett, in said State; George R. Howard, county clerk of
the county of Pope, in said State; John Brodie, county clerk of the county of Pulaski, in said State; Joseph T. Robinson, county clerk of the county of Randolph, in said State; W. H. Evans, county clerk of the county of Saline, in said State; C. H. Howe, county clerk of the county of Sebastian, in said State; F. Laughinghouse, county clerk of the county of St. Francis, in said State; C. W. Hearin, county clerk of the county of Union, in said State; C. S. George, county clerk of the county of White, in said State, and Ed. Roddy, county clerk of the county of Woodruff, in said State; and your orator says:

(1.) That your orator is incorporated under and by virtue of the laws of the State of New York and is a citizen of said State, and is not an inhabitant or citizen of the State of Arkansas, and that each one of the defendants is a citizen of the State of Arkansas, and that the amount or value in controversy in this suit exceeds the sum of two thousand dollars, exclusive of interest and costs.

That at and prior to the eighth day of April, 1893, your orator was and has ever since been engaged in the business of operating electric telegraphic lines and in receiving and sending telegrams over the same to different parts of the United States, with extensive cable lines under the sea, and that it has its general office in the city of New York and State of New York; that for the purpose of carrying on said business it has constructed many thousand miles of telegraph lines throughout all of the States and Territories of the United States, and has now and then had many thousands of offices scattered throughout all of said States and Territories for
the receiving and sending of such telegrams, and has had
4 for many years past.

That by an act of the General Assembly of the State of Arkansas entitled "An act to assess and collect taxes from certain corporations," approved April 8th, 1893, it was made the duty of any telegraph company incorporated by the laws of any State of the United States and carrying on its business within the State — Arkansas to make and file with the board of railroad commissioners of said State a statement showing in detail the following facts:

1st. A certified copy of the articles of incorporation under which the company so reporting was organized and carrying on its said business.

2nd. The amount of the capital stock of such company subscribed, whether designated as common or preferred stock, and showing the par value of each share and the market value of the same at the time of making such statement.

3rd. The total number of miles of line within or without the State of Arkansas which any such telegraph company employed in the transaction of its said business.

4th. The number of miles of line within the State of Arkansas over which such company was carrying on its said business.

And it is further provided by said act that if the said board of railroad commissioners should have reason to believe that any statement contained in such report was false in any material matter it should be their duty to procure other information about the matters contained therein, and also that the said board should have power and that it should be their duty to resort to other sources of information in the event that any such corporation should fail or refuse to file the report aforesaid.

5 And it is further provided by said act that upon the filing of such report by such corporation or upon the obtaining the information aforesaid the said board of railroad commissioners should proceed to ascertain the value of the entire capital stock of the corporation making such report, and thereupon fix the sum at which the property of such corporation should be assessed within the State of Arkansas for purposes of taxation by taking the same proportion of the aggregate value of the capital stock of said corporation as the number of miles of telegraph lines within the State of Arkansas over which such telegraph company carried on its business should bear to the aggregate number of miles of line within as well as without the State of Arkansas over and upon which the said telegraph company should carry on its business.

And by section three of the act it was further provided that after the said board of railroad commissioners should have ascertained the aggregate amount to be assessed against the property of said telegraph company the said board should then proceed to ascertain the parts of such aggregate valuation to be apportioned to the several counties in which said property should be subject to taxation by dividing the aggregate amount fixed as said taxable value in the State of Arkansas by the entire number of miles of telegraph lines over which such telegraph company was carrying on its business in the entire State, and enacted that the result should be the value per mile of such capital stock for the purpose of taxation; and providing further that the value per mile of such capital stock thus ascertained should be multiplied by the number of miles of telegraph lines lying and being situated in any county, and that
6 the product thereof should be the sum to be taxed in such county; and providing further that it should be the duty of the secretary of state, at the same time that he is required by law to certify the assessment of rolling stock of railroad corporations, to certify to the assessor of said respective counties in which said sums are to be taxed the amount to be fixed in each particular county, and that the assessor should then list and assess the same as personal property, designating the same upon his assessment-roll as "capital stock of —."

A copy of the said act of the General Assembly of the State of Arkansas is hereto attached and made a part hereof and markad "Exhibit A."

That in pursuance of said act and within the time required thereby your orator complied with said statute by filing its statement or report, protesting, however, therein that said act of April 8th, 1893, was invalid and void as to your orator, and that it was not obliged by law to make said report, said report contain-g the following statements, which were in all things true: "On the first day of July, 1893, said corporation had its principal place of business at 195 Broadway, New York city, but had a principal office in the State of Arkansas at 112 Scott street, in the city of Little Rock. Upon that day the total capital stock of the company issued and then outstanding was $94,820,000, consisting of 948,200 shares of $100 each, par value.

"On the first day of July, 1893, there was no market value for all of the shares of the company's stock. The total number which was
sold or speculated in on that day on the New York stock
7 exchange amounts to 6,004 shares, at prices ranging from
81⅞ to 83 per share. Of these shares dealt in on the New York stock exchange only a small proportion were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of shares. It was impossible on that day or upon any other day since to sell all the shares of the stock of the said company for such prices or any other approximating thereto, whether such price was the real value of the shares or not. There is and from the nature of the case can be no market price for all the shares of stock of the company.

"Whether the price paid on July 1, 1893, was the fair, actual value of the shares sold it is impossible for the company's officers to state, but such stock-exchange prices, whether of speculative or actual sales, do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property earnings or future prospects—for instance, upon the state of national politics; upon the national financial policy and the certainty or uncertainty of what that policy may be in the future; upon the amount of shipments of gold abroad or the importations of gold; upon the stringency or ease of the local money market; upon the financial necessities of holders of the company's stock, even upon rumors of insolvency of prominent financiers who may or may not be holders of the company's shares; upon rapid declines in the market prices of shares of other companies; upon panicky conditions of financial centers at home or in Europe; upon the formation
of pool- or cliques to advance or depress the stock-exchange
8 prices of these shares or even of other shares, and upon many
other considerations which have no relation to the company's business. This is shown in a marked degree from the circumstances that between the first day of January last and the first day of May last the stock-exchange prices of the company shares fell from 101

to 80¼, and even in the month of April fell from 94½ to 80, falling with the same rapidity as they had within several months advanced.

"Any movements of the stock exchange of prices both down and up were without reference to the value of the company's property or of its future prospects or its present or its future business, all of which were staple and have been so for many years. During the past twelve years, in which the company has regularly paid a dividend and in which its surplus earnings had not materially altered from year to year, in which there was a steady increase in value of the company's actual property, the stock-exchange prices have varied as follows:

1882	76⅛	to	93⅜
1883	71¾		88¼
1884	49		78⅛
1885	53½		81⅜
1886	60½		80½
1887	67½		81½
1888	70⅜		86¾
1889	81⅝		88¾
1890	71¾		87
1891	76		85½
1892	82		100⅜
1893, to May 1st	80½		101

"This company declares that any price of the shares, whether
market value or actual value, includes amongst other things
9 a consideration of the company's franchises owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries; by a consideration of the company's good will, its probable future earnings, its present management and its prospective management, its contract or other relations to powerful railroad and telephone and cable companies—each and all of very great value to the company, but none of which elements is the subject of taxation by the State of Arkansas—as well as a consideration of the actual value of its property, real or personal, including that which is situated in the State of Arkansas and taxable by it; that in estimating such market or actual value of shares the value of such real or personal property of the entire system of the company or that situated in the State of Arkansas cannot be distinguished from the value of such intangible franchises, rights, contracts, management, and good will, and that any attempt upon the part of the State of Arkansas to value the company's entire property or that which is situated in the State of Arkansas upon the basis of any market or actual value of the shares will necessarily include a value of the said franchises, rights, contracts, management, and good will, all of which are beyond the jurisdiction of the State, and any taxation thereof by the State of Arkansas would be null and void.

"The whole length of the lines of this company, whether owned, leased, or controlled through the ownership of the shares of other companies, including those extending into and through Canada and under the high seas to Cuba and to England, is 189,576 miles, and the length of such lines in the State of Arkansas was 2,010 miles.

10 "This company represents, however, that a fair valuation of its property in the State of Arkansas, which consists entirely of its telegraph lines and appurtenances, cannot be ascertained even approximately by applying the proportion which such mileage of line in Arkansas (2,010 miles) bears to the entire mileage of the company (189,576 miles) upon the valuation of all the shares of the company's stock, whether such valuation be a stock-exchange value or the actual value of such shares, because such valuation includes elements of value not existing within the State of Arkansas or not taxable by it, as stated aforesaid, and also because the lines of telegraph possessed by the company in and out of the State of Arkansas are not of uniform value per mile, and that any valuation of the company's lines in Arkansas upon the basis of a uniform value per mile of all the company's lines would be a great injustice to this company and would result practica*b*ly in double taxation of the company's property.

"The value of the lines of this company within the State of Arkansas, if made upon the basis of the actual cost, less depreciation, will not exceed $102,229.68, but if it should be made upon the basis of the cost of reproduction of an entirely new line of the same extent and location it would be $282,763.71.

"This is apparent from the following facts: The standard size of poles in Arkansas is 25 ft. long, costing, delivered, from 50 cts. to $1.20, according*ly* to the kind of timber. White cedar largely predominates and costs about $1.20. In cities and towns poles ranging from 30 to 55 ft. in length are used, but the proportion of long poles, compared with those which are 25 ft. long, is very small. A fair average cost of poles with fixtures would not exceed $1.60
11 each. The labor required to set them in the ground and attach the cross-arms thereto will not average more than $1.00 per pole, of which there are 30 to the mile.

"The standard size of No. 8 wire weighs 380 lbs. to the mile, and costs, with freight added, 4½ cents per lb., making the cost per mile of wire equal $17.10. The cost for stringing the wire on poles averages $4.00 per mile. A set of instruments costs $6.50, upon the average.

"Upon this basis the full value of the company's plant in Arkansas, should it be reconstructed new of the same extent and location, would be as follows:

2,010 miles of poles, at $71.24 per mile	$143,192 40
5,881.64 " " wire, at $23.73 per mile	139,571 31
686 sets of instruments, at $6.50	4,459 00
7,650 cells of battery, at $0.40	3,060 00
	$290,282 71

"This valuation is far in excess of the actual value of the existing plant, considered as property. The existing lines have been largely constructed under contract with the railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor. As the average life of a cedar telegraph pole is from 12 to 15 years and a large portion of the line in Arkansas is old, requiring replacement in a few years at a high cost, it is apparent that the present plant is not of the value of a new one.

"While the cost per mile in the State of Arkansas or in any other State can be averaged with substantial accuracy, because the conditions existing there are substantially uniform, no such rule can apply to the company's lines as a whole, thousands of miles 12 of line in cables under the high seas costing between $3,000 and $4,000 per mile. In the more densely settled portions of the country, like Massachusetts, New York, Pennsylvania, and New Jersey, where also the company's main trunk lines are larger, the cost per mile of line is vastly greater than the average cost per mile of line, the company possessing thousands of miles of lines there which cost fully $2,500 per mile.

"The company also has a large mileage of line laid under grounds in conduits, in which the cost is much greater than the average mile of its system. In the far west of the United States the necessity to transport poles and wires from the east for a great distance adds largely to the cost per mile of line, and many thousands of miles of line have been built in advance of the railroad and at a great cost for transportation by wagon across the plains and mountains, making the rate there far beyond the average.

"Besides the elements of Federal and foreign franchises, contracts, patent rights, and business skill entering into the value of the shares of stock, as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies and local telegraph companies, of an aggregate value of $7,633,230.12, none of which are of corporations of the State of Arkansas, and it has also large investments in real estate in New York city and Chicago and other cities and towns in the United States and Canada, none of which are in Arkansas, the cost of which was $10,507,826.64, as per Schedule A, hereto attached. It is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of property is in some degree used for the company's business, but 13 it is not all exclusively used for that purpose. The large office buildings in New York city and in Chicago are only partially used for the company's business, the remainder of it being rented to tenants as any other property of that character. The said schedule also sets forth the assessed valuation of each of these places, so far as the company's books show them. Some of them are exempt from taxation by local laws; others are, for local reasons, assessed below their actual value.

"Any apportionment to Arkansas of the company's capital stock on the mileage basis will necessarily include the value of such shares, bonds, real estate, franchises, contracts, and party rights, all of which are outside the jurisdiction of the State of Arkansas.

"As a further proof that the mileage basis does not correctly indicate the value of the company's property in Arkansas, the company shows that while the gross receipts from the company's business throughout its entire system average $32.00 per mile of wire, in Arkansas the average is $23.00 per mile of wire, and that the net earnings of the entire system average $10 per mile of wire, but in Arkansas do not exceed $6.00 per mile of wire.

"As a further proof to the same end, the company shows that if the entire capital of the company be taken at the stock-exchange price of July first last, say 82½, and if the apportionment thereof to the State of Arkansas upon the mileage basis above set forth be taxed at an average rate of 2 % (which is probably the average rate of taxation in Arkansas), it would require the company to pay a tax annually in this State of about $18,000.00. As the net
14 earnings of the company from all its business in the State of
Arkansas, whether from interstate or local traffic, do not exceed the sum of $37,000, it appears that a tax upon such a mileage basis would nearly equal 50 % of the entire income of the company's property in the State, which is a rate of taxation unheard of, grossly unequal, and substantially destructive.

"The company further represents that on July 1st, 1867, it formally accepted the provisions of the act of July 24, 1866 (now sections 5263–5269 of the Revised Statutes of the United States); that all the telegraph lines in the State of Arkansas which it owns, leases, or operates are erected and constructed upon the railroads, streets, and other post-roads of the United States; that by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Arkansas, and from or to points without the State of Arkansas to or from points within the State of Arkansas, for the Government of the United States and for the citizens thereof; that the enforcement of this scheme of taxation provided in the said supposed law of the State of Arkansas, 1893, will substantially destroy the value of the property of this company in the State of Arkansas constructed under such post-roads and operated by this company in the performance of its functions, under said act of Congress, and thereby prevent it from the due performance of its obligations thereunder.

"Schedule B, hereto attached, is a statement of the lines owned by said company within the State of Arkansas, and the location thereof in each county."

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SCHEDULE A.

Real Estate of the Western Union Telegraph Company.

Location.	Cost per ledger.	Assessed value.
Broadway & Dey St., New York	$2,823,039 52	$1,500,000 00
5th Ave. & 23rd St., New York	202,524 74	290,000 00
16 & 18 Broad St., New York	191,518 77	300,000 00
Fifty-fifth street, New York	20,384 43	2,000 00
Chicago	1,500,000 00	165,000 00
Estimated improvements	200,000 00	
Chicago boulevard	2,500 00	590 00
Philadelphia	30,866 67	36,000 00
Sacramento, Cali	5,500 00	
Plaister Cove, C. B.	2,120 91	
Sandy Hook, New Jersey	7,349 62	
Highlands, New Jersey	3,463 00	
Avila, Cal	173 68	
Cisco, Cal	80 00	
North Sidney, C. B	4,040 00	
Petersburgh, Tenn.	150 00	
Ash Bay, N. S.	501 50	
White River Junction, Vt.	443 34	
Signal station, Cape Henlopen	750 00	
Cape Canso, N. S.	12,196 23	
Port Hastings, C. B.	1,001 65	
Fire Island observatory	3,370 50	
Marine building, Sandy Hook	1,372 08	
	$5,013,326 64	

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SCHEDULE B.

County.	Railroad route.	Miles of poles.	Miles of wire.
Arkansas	St. L. S. W. (main line)	18.18	72.72
Ashley	Ho. Cent'l, Ark. & No. R. R	28.00	28.00
Benton	K. C., Ft. S. & R. So. R'y	2.00	2.00
	St. L. & San. Fran. (Tex. Div.)	26.75	53.50
Bradley	L. R., M. R. & Tex. (Warren Br.)	5.37	10.74
Calhoun	St. L. S. W. (main line)	10.33	30.00
Carroll	Eureka Springs R'y	12.00	12.00
Chicot	Ho. Cent'l, Ark. & No. R'y	10.00	10.00
	L. R., M. R. & T. (Warren Br.)	6.03	12.06
Clark	St. L., I. Mt. & S. (main line)	29.93	89.79
	“ “ (Camden Br.)	10.24	20.48
Clay	St. L., I. Mo. & So. (main line)	19.22	76.88
	“ “ (Helena Br.)	4.66	4.66
	St. L. S. W. (main line)	17.14	68.56
Cleveland	St. L. S. W. (main line)	21.37	64.11
Columbia	St. L. S. W. (main line)	22.97	68.91
	“ “ (Magnolia Br.)	6.50	13.00
Conway	Mo. Pac. or L. R. & Ft. Smith	23.14	66.42
Craighead	K. C., Ft. S. & Memphis R'y	27.76	138.82
	St. L., I. Mo. & So. (Helena Br.)	20.64	20.64
	St. L. & So. W. (main line)	29.25	117.00
Crawford	Mo. Pac. or L. R. & Ft. S.	23.43	70.29
	St. L. & S. F. R'y (Tex. Div.)	32.18	64.36
Crittenden	K. C., Ft. S. & M. R'y	26.23	157.38
	L. R. & M. R'y	20.00	60.00
	St. L., I. Mo. & So. (Memphis Br.)	27.28	83.34
	Highway line	1.00	2.00
17 Cross	St. L., I. Mo. & So. (Helena Br.)	20.85	20.85
	“ “ (Memphis Br.)	32.68	98.04
	St. L. S. W. (main line	17.52	70.08
Dallas	St. L. S. W. (main line)	5.71	17.13
Desha	Ho. Cent'l, Ark. & No. R'y	7.00	7.00
	L. R., M. R. & Tex. R'y	33.02	80.04
	“ “ (Warren Br.)	5.45	10.90
Drew	Ho. Cent'l, Ark. & No. R'y	1.00	1.00
	L. R., M. R. & Tex. R'y	5.25	10.50
	“ “ (Warren Br.)	33.15	66.30
Faulkner	Mo. Pac. or L. R. & Ft. Smith	19.92	59.76
Franklin	Mo. Pac. or L. R. & Ft. Smith	24.37	73.11
Fulton	K. C., Ft. S. & Memphis R'y	14.76	59.04
Garland	Hot Springs R'y		34.50
Greene	K. C., Ft. S. & Memphis R'y	1.38	5.52
	St. L., I. Mt. & So. (main line)	9.70	38.80
	“ “ (Helena Br.)	23.00	23.00
	St. L. S. W. (main line)	21.85	101.72
Hempstead	St. L., I. Mt. & So. (main line)	21.85	65.55
Hot Spring	Hot Springs railway		43.50
	St. L., Iron Mt. & So. (main line)	26.29	104.30
Independence	St. L., I. Mt. & So. (main line)	1.00	4.00
	“ “ (White River Br.)	32.57	32.57
Jackson	Batesville & Brinkley (main line)	23.00	23.00
	St. L., I. Mt. & So. (main line)	36.23	144.92
	“ “ (White River Br.)	9.43	9.43
Jefferson	L. R., M. R. & Tex. R'y	42.47	131.42
	St. L. S. W. (main line)	32.63	117.94
	“ “ (Little Rock Br.)	18.50	18.50
Johnson	Mo. Pac. or L. R. & Ft. S.	31.44	94.32

Schedule B—Continued.

County.	Railroad route.	Miles of poles.	Miles of wire.
18 La Fayette	St. L. S. W. (main line)	14.00	42.00
	" " (Shreveport Br.)	23.00	23.00
Lawrence	K. C., Ft. S. & Memphis R'y	35.06	140.24
	St. L., I. M. & So. (main line)	23.00	92.00
Lee	St. L., I. M. & So. (Helena Br.)	19.20	38.40
Lincoln	L. R., M. R. & Tex. R'y	13.50	27.00
Lonoke	L. R. & Memphis R'y	20.00	60.00
	St. L., I. M. & S. (main line)	13.42	80.52
	St. L. S. W. (Little Rock Br.)	16.40	16.40
Madison	St. L. & S. F. (St. Paul Br.)	15.57	15.57
Miller	St. L., I. M. & So. (main line)	18.36	55.08
	St. L. S. W. (main line)	21.29	63.87
Monroe	Batesville & Brinkley (main line)	9.00	9.00
	L. R. & Memphis R'y	15.00	45.00
	St. L. S. W. (main line)	32.88	131.52
Nevada	St. L., I. M. & So. (main line)	13.82	41.46
Ouachita	St. L., I. M. & So. (Camden Br.)	23.76	47.52
	" " (White River Br.)	15.70	31.40
	St. L. S. W. (main line)	41.76	125.25
Phillips	St. L., I. M. & So. (Helena Br.)	18.36	36.72
Poinsett	K. C., Ft. S. & Memphis R'y	22.88	137.28
	St. L., I. M. & So. (Helena Br.)	18.10	18.10
	St. L. S. W. (main line)	20.18	80.72
Pope	Mo. Pac. or L. R. & Ft. Smith	27.55	82.65
Prairie	Little Rock & Memphis R'y	23.00	69.00
	St. L. S. W. (main line)	5.43	21.72
19 Pulaski	Little Rock & Memphis railway	13.00	39.00
	Mo. Pac. or L. R. & Ft. S.	16.15	48.45
	L. R., M. R. & Tex. R'y	12.59	50.36
	St. L., I. Mt. & So. (main line)	29.43	169.04
	St. L. S. W. (Little Rock Br.)	9.10	9.10
Randolph	K. C., Ft. S. & Mem. R'y	1.15	4.60
	St. L., I. M. & So. (main line)	2.44	9.76
	Highway line	7.00	7.00
Saline	L. R., M. R. & Tex. R'y	6.17	24.68
	St. L., I. M. & So. (main line)	20.91	125.40
Scott	St. L. & S. F. (Mansfield Br.)	.59	.59
Sebastian	Mo. Pac. (Kans. & Ark. Val. Div.)	18.00	18.00
	St. L. & S. F. (Tex. Div.)	20.07	40.14
	" " (Mansfield Br.)	17.41	17.41
Sharp	K. C., Ft. S. & Memphis R'y	17.78	71.12
St. Francis	Little Rock & Memphis R'y	50.50	151.50
	St. L., I. Mt. & So	171.19	23.63
Union	St. L., I. M. & So. (White River Br.)	16.30	32.60
Washington	St. L. & S. F. (Tex. Div.)	37.00	76.00
	" " (St. Paul Br.)	17.43	17.43
White	Searcy & West Point R'y	4.50	4.50
	St. L., I. M. & So. (main line)	38.90	210.14
	" " (Memphis Br.)	11.79	35.37
Woodruff	Batesville & Brinkley (main line)	24.00	24.00
	" " (Aug. & So. East. Div.	6.50	13.00
	St. L., I. M. & So. (Memphis Br.)	20.75	76.25
	St. L. S. W. (main line)	16.44	65.76
		2,010.00	5,881.64

16

SCHEDULE B.

County.	Railroad route.	Miles of poles.	Miles of wire.
Arkansas	St. L. S. W. (main line)	18.18	72.72
Ashley	Ho. Cent'l, Ark. & No. R. R	28.00	28.00
Benton	K. C., Ft. S. & R. So. R'y	2.00	2.00
	St. L. & San. Fran. (Tex. Div.)	26.75	53.50
Bradley	L. R., M. R. & Tex. (Warren Br.)	5.37	10.74
Calhoun	St. L. S. W. (main line)	10.33	30.00
Carroll	Eureka Springs R'y	12.00	12.00
Chicot	Ho. Cent'l, Ark. & No. R'y	10.00	10.00
	L. R., M. R. & T. (Warren Br.)	6.03	12.06
Clark	St. L., I. Mt. & S. (main line)	29.93	89.79
	“ “ (Camden Br.)	10.24	20.48
Clay	St. L., I. Mo. & So. (main line)	19.22	76.88
	“ “ (Helena Br.)	4.66	4.66
	St. L. S. W. (main line)	17.14	68.56
Cleveland	St. L. S. W. (main line)	21.37	64.11
Columbia	St. L. S. W. (main line)	22.97	68.91
	“ “ (Magnolia Br.)	6.50	13.00
Conway	Mo. Pac. or L. R. & Ft. Smith	23.14	66.42
Craighead	K. C., Ft. S. & Memphis R'y	27.76	138.82
	St. L., I. Mo. & So. (Helena Br.)	20.64	20.64
	St. L. & So. W. (main line)	29.25	117.00
Crawford	Mo. Pac. or L. R. & Ft. S.	23.43	70.29
	St. L. & S. F. R'y (Tex. Div.)	32.18	64.36
Crittenden	K. C., Ft. S. & M. R'y	26.23	157.38
	L. R. & M. R'y	20.00	60.00
	St. L., I. Mo. & So. (Memphis Br.)	27.28	83.34
	Highway line	1.00	2.00
17 Cross	St. L., I. Mo. & So. (Helena Br.)	20.85	20.85
	“ “ (Memphis Br.)	32.68	98.04
	St. L. S. W. (main line	17.52	70.08
Dallas	St. L. S. W. (main line)	5.71	17.13
Desha	Ho. Cent'l, Ark. & No. R'y	7.00	7.00
	L. R., M. R. & Tex. R'y	33.02	80.04
	“ “ (Warren Br.)	5.45	10.90
Drew	Ho. Cent'l, Ark. & No. R'y	1.00	1.00
	L. R., M. R. & Tex. R'y	5.25	10.50
	“ “ (Warren Br.)	33.15	66.30
Faulkner	Mo. Pac. or L. R. & Ft. Smith	19.92	59.76
Franklin	Mo. Pac. or L. R. & Ft. Smith	24.37	73.11
Fulton	K. C., Ft. S. & Memphis R'y	14.76	59.04
Garland	Hot Springs R'y		34.50
Greene	K. C., Ft. S. & Memphis R'y	1.38	5.52
	St. L., I. Mt. & So. (main line)	9.70	38.80
	“ “ (Helena Br.)	23.00	23.00
	St. L. S. W. (main line)	21.85	101.72
Hempstead	St. L., I. Mt. & So. (main line)	21.85	65.55
Hot Spring	Hot Springs railway		43.50
	St. L., Iron Mt. & So. (main line)	26.29	104.30
Independence	St. L., I. Mt. & So. (main line)	1.00	4.00
	“ “ (White River Br.)	32.57	32.57
Jackson	Batesville & Brinkley (main line)	23.00	23.00
	St. L., I. Mt. & So. (main line)	36.23	144.92
	“ “ (White River Br.)	9.43	9.43
Jefferson	L. R., M. R. & Tex. R'y	42.47	131.42
	St. L. S. W. (main line)	32.63	117.94
	“ “ (Little Rock Br.)	18.50	18.50
Johnson	Mo. Pac. or L. R. & Ft. S.	31.44	94.32

Schedule B—Continued.

County.	Railroad route.	Miles of poles.	Miles of wire.
18 La Fayette....	St. L. S. W. (main line)........	14.00	42.00
	" " (Shreveport Br.)..........	23.00	23.00
Lawrence	K. C., Ft. S. & Memphis R'y.........	35.06	140.24
	St. L., I. M. & So. (main line)........	23.00	92.00
Lee	St. L., I. M. & So. (Helena Br.).......	19.20	38.40
Lincoln............	L. R., M. R. & Tex. R'y.............	13.50	27.00
Lonoke	L. R. & Memphis R'y...............	20.00	60.00
	St. L., I. M. & S. (main line)..........	13.42	80.52
	St. L. S. W. (Little Rock Br.).........	16.40	16.40
Madison...........	St. L. & S. F. (St. Paul Br.)	15.57	15.57
Miller	St. L., I. M. & So. (main line).........	18.36	55.08
	St. L. S. W. (main line)...............	21.29	63.87
Monroe	Batesville & Brinkley (main line).....	9.00	9.00
	L. R. & Memphis R'y................	15.00	45.00
	St. L. S. W. (main line)........	32.88	131.52
Nevada.............	St. L., I. M. & So. (main line)........	13.82	41.46
Ouachita...........	St. L., I. M. & So. (Camden Br.)... ..	23.76	47.52
	" " (White River Br.)..	15.70	31.40
	St. L. S. W. (main line)...............	41.76	125.25
Phillips	St. L., I. M. & So. (Helena Br.).......	18.36	36.72
Poinsett	K. C., Ft. S. & Memphis R'y.........	22.88	137.28
	St. L., I. M. & So. (Helena Br.).......	18.10	18.10
	St. L. S. W. (main line)...............	20.18	80.72
Pope	Mo. Pac. or L. R. & Ft. Smith........	27.55	82.65
Prairie	Little Rock & Memphis R'y	23.00	69.00
	St. L. S. W. (main line)	5.43	21.72
19 Pulaski.......	Little Rock & Memphis railway	13.00	39.00
	Mo. Pac. or L. R. & Ft. S.............	16.15	48.45
	L. R., M. R. & Tex. R'y.............	12.59	50.36
	St. L., I. Mt. & So. (main line).......	29.43	169.04
	St. L. S. W. (Little Rock Br.)..........	9.10	9.10
Randolph..........	K. C., Ft. S. & Mem. R'y	1.15	4.60
	St. L., I. M. & So. (main line)........	2.44	9.76
	Highway line........................	7.00	7.00
Saline	L. R., M. R. & Tex. R'y..............	6.17	24.68
	St. L., I. M. & So. (main line)........	20.91	125.40
Scott	St. L. & S. F. (Mansfield Br.).........	.59	.59
Sebastian..........	Mo. Pac. (Kans. & Ark. Val. Div.)....	18.00	18.00
	St. L. & S. F. (Tex. Div.)......... ...	20.07	40.14
	" " (Mansfield Br.).........	17.41	17.41
Sharp	K. C., Ft. S. & Memphis R'y..........	17.78	71.12
St. Francis.........	Little Rock & Memphis R'y	50.50	151.50
	St. L., I. Mt. & So...................	171.19	23.63
Union	St. L., I. M. & So. (White River Br.)..	16.30	32.60
Washington.........	St. L. & S. F. (Tex. Div.).......	37.00	76.00
	" " (St. Paul Br.)............	17.43	17.43
White..............	Searcy & West Point R'y.............	4.50	4.50
	St. L., I. M. & So. (main line)........	38.90	210.14
	" " (Memphis Br.)....	11.79	35.37
Woodruff...........	Batesville & Brinkley (main line).....	24.00	24.00
	" " (Aug. & So. East. Div..........	6.50	13.00
	St. L., I. M. & So. (Memphis Br.).....	20.75	76.25
	St. L. S. W. (main line)...............	16.44	65.76
		2,010.00	5,881.64

20 Your orator further shows that the following table shows correctly the gross receipts of its business in this State for the year 1892:

Western Union Telegraph Company.

Report of the Independent Telegraph Offices in Arkansas for the Year 1892.

Average gross receipts per month.

Augusta	$34 48	Little Rock	3,374 27
Batesville	80 40	Newport	175 20
Camden	274 41	Pine Bluff	869 57
Eureka Springs	87 35	Ravenden Springs	91
Forrest City	79 31	Searcy	72 82
Fort Smith	790 88	Texarkana	635 91
Helena	372 35		
Hot Springs	3,173 91	Total	$10,021 77

Number of independent offices in Arkansas, 14.

The Western Union Telegraph Co.

Report of the Joint Railroad Telegraph Offices in Arkansas for the Year 1892.

Average gross receipts per month.

21 Black Rock	$19 89	Clarksville	45 50
Clarkston	4 91	Cushman	4 48
Hoxie	13 96	Corning	24 36
Imboden	5 49	Collins	5 17
Marked Tree	9 51	Cabot	8 13
Marion	4 41	Dermott	28 45
Ravenden	2 21	Dyer	2 53
Williford	2 27	Elliott	3 29
Argenta	25 23	Fulton	28 88
Carlisle	7 67	Garner	4 08
Edmonson	3 14	Greenwood	10 89
Lonoke	31 94	Harrisburg	9 81
Arkansas City	77 94	Hensley	8 27
Alexander	4 23	Hope	169 97
Atkins	3 59	Jacksonville	1 93
Altus	11 10	Judsonia	10 01
Beebe	35 30	Knoble	6 63
Benton	8 06	Lexa	6 89
Bald Knob	10 16	Monticello	54 36
Cherry Valley	4 54	Morrillton	113 04
McAlmont	35	Knoxville	2 04
McGehee	10 00	Martin Junction	1 34
Minturn	1 87	Mariana	75 97
Malvern	68 12	Mill Creek	1 37
Nettleton	2 91	Mulberry	5 31

	Ozark	13	74
	Olyphant	4	35
	Plummerville	8	00
22	Portland	12	72
	Big Bay	3	77
	Gilmore	9	90
	Hardy	3	29
	Jonesboro'	80	17
	Mammoth Springs	44	06
	Portia	7	70
	Sedgwick	9	62
	Sulphur Springs	10	71
	Brinkley	80	58
	Devall's Bluff	18	94
	Hazen	9	32
	Palestine	7	42
	Arkadelphia	76	33
	Alicia	2	05
	Austin	6	72
	Alma	10	32
	Bierne	2	25
	Bradford	3	15
	Crawfordsville	5	15
	Cabin Creek	6	15
	Coal Hill	15	19
	Cypress	2	96
	Conway	31	14
	Curtis	1	98
	Donaldson	6	09
	Dumas	6	79
	Diaz		
	El Dorado	33	37
23	Gavin	2	33
	Gurdon	33	60
	Gainesville	2	42
	Hartman	2	64
	Homan		53
	Jefferson Springs	2	68
	Jenny Lind	3	74
	Kensett	7	08
	Milner	9	48
	Piggott	9	82
	Rison	7	67
	Roe	3	82
	Stephens	18	19
	St. Francis	22	45
	Van Duzer	5	59
	Waldo	26	50
	Auvergne	4	68
	Grays	14	40
	Howells	10	90
	McCrony	8	96
	Morrell	2	89
	Newark	4	36
	Noble Lake	9	53
	O'Kean	2	79
	Peach Orchard	1	33
	Paragould	75	21
	Parkdale	11	46
	Palarm	3	84
	Piney		62
	Redfield	7	06
	Spadra	4	52
	Smithton	5	10
	Sulphur Rock	4	49
	Tuckerman	8	84
	Tillar	8	77
	Varnsdale	8	41
	Walnut Lake	11	41
	Woodson	1	70
	Wynne	43	86
	Chester	4	74
	Fayetteville	138	53
	Hackett	6	93
	Jenson	3	35
	Mansfield	3	54
	Lowell	2	90
	Rogers	89	88
	St. Paul	9	13
	West Fork	3	41
	Altheimer	12	89
	Brookland	1	67
	Buena Vista	6	77
	Dry Run	22	05
	England	7	77
	Fordyce	47	17
	Garland City	4	03
	Gilkerson		86
	Greenway	9	28
	Kingsland	19	88
	Magnolia	52	32
	Portia		72
	Springdale	41	66
	Van Buren	10[illegible]	51
	Winslow	2	02
	Bearden	11	58
	Buckner	6	62
	Clarendon	30	15
	Eagle Mill	11	07
	Fisher	1	99
	Fair Oaks	3	62
	Genoa	8	07

Riverside..........	5	77	Goldman..........	1	65
Prescott...........	67	31	Kedron............	4	88
Russellville........	98	66	Little Bay.........	9	66
Russell............	1	44	McNeil............	11	43
Swifton...........	6	10	New Lewisville.....	50	45
Smackover......	5	55	Rector............	19	94
Trippe Junction....	2	73	Rob Roy...........	6	01
Traskwood.......	7	92	Sherrill...........	6	49
Varner.......	11	18	Stuttgart..........	85	38
Walnut Ridge.....	35	69	Thornton..........	12	90
Wrightsville.......	6	83	Wabbaseka........	4	66
Warren...........	33	68	Weiner............	2	92
Brentwood.........	1	74	Cotton Plant.......	30	49
Durham...........	12	80	Gregory...........	5	59
Garfield...........	4	42	Jacksonport........	3	34
Huntington........	16	15	Tupelo............	5	10
Lillie...........		54			
Mountainburg.....	3	05	Total........	$3,201	62

24 Number of joint railroad offices in Arkansas, 186.

That after said report was made and filed by your orator the board of railroad commissioners of the State of Arkansas, composed of William M. Fishback, governor of the State; H. B. Armistead, secretary of State, and C. B. Mills, auditor of State, claiming to proceed under and by virtue of the authority of said act of the General Assembly, assessed your orator's property for taxes within the State at the sum of $195.00 per mile of its lines of telegraph therein, making the total amount of property thus assessed against your orator in this State $396,387.00, as will be seen by reference to a copy of said assessment, herewith filed, marked Exhibit B, and made a part hereof.

That the said assessment is grossly excessive, and that the real value of the property of your orator in said several counties in said State is as above stated and no more.

That the aggregate of all the assessments made by said board of railroad commissioners for the several counties within the State of Arkansas wherein your orator does business bears no relation whatever to the value of your orator's property situated and used within said State and is many times greater than the value of all of the property of every description owned by your orator and situated or used within the said State, and that in fixing the sum to be taxed in the several counties aforesaid the said board of railroad commissioners intentionally included the value of property (including real estate) owned by your orator which was neither situated nor used
within the State of Arkansas nor in any manner subject to
25 the jurisdiction of said State, for taxation or otherwise; but
the said board claimed to proceed by the authority of the
said act of assembly.

Your orator avers that the value of its property of every kind and description situated within the State of Arkansas did not bear

the same proportion or nearly the same proportion to its property in other States that the whole number of miles of lines within the State of Arkansas over which your orator carried on its business as aforesaid bore to the whole number of miles of telegraph lines within such other States over which your orator carried on its business in such other States, nor did your orator's property aforesaid within the State of Arkansas bear the same or nearly the same proportion to all of the property owned by it and represented by or constituting its capital stock as the number of miles of its lines within the State of Arkansas over which your orator carries on its business as aforesaid bears to the whole number of miles of lines, wherever situated, over which your orator carries on its business; that in any of the States in which your orator carries on its business as aforesaid the value of its property situated in such States is much greater per mile of lines over which your orator carries on its said business in such States than the value of its property situated in the State of Arkansas per mile of lines within said State over which it carries on its said business, and that the ratio of value of all of the property owned by your orator, of every description, situated within the State of Arkansas to the value of the whole of your orator's property is much less than that which the number of miles of lines within the State of Arkansas over
which your orator carries on its business as aforesaid bears
26 to the whole number of miles of lines over which your orator
carries on its said business; that the value of the whole of your orator's property within the State of Arkansas is, approximately; equal to no more than about one-ninetieth part of the value of the whole of the property owned by your orator and representing its capital stock, while the number of miles of line over which your orator carries on its said business within the State of Arkansas as aforesaid is equal to no more than about a hundredth part of the whole number of miles over which such business is carried on; that the value of the whole of your orator's property situated within the State of Arkansas, of every kind and description, did not exceed the sum above stated.

Your orator further shows that by the laws of the State of Arkansas the property of all persons (except express companies) situated within the State and of the same character as the property owned by your orator and situated therein, as hereinbefore alleged, is required to be assessed for purposes of taxation by local or county assessors in each county wherein the property subject to taxation may be situated, and by the constitution of the State of Arkansas all laws are required to be uniform in their operation, all property subject to taxation is required to be taxed according to its value, the value is required to be ascertained by an equal and uniform method throughout the State, and no species of property is permitted to be taxed higher than any other species of equal value.

That the act of the General Assembly of the State of Arkansas hereinbefore referred to, and of which a copy is hereto attached and
marked "A," is a void and unconstitutional act and the assess-
27 ment of your orator's property by the said board of railroad

commissioners pursuant thereto is a void and unconstitutional assessment, because (1) the said act provides for the assessment of, and the assessment embraces, property not situated within the jurisdiction of the State of Arkansas; and (2) the said act provides for the assessment and taxation of, and the said assessment embraces, interstate commerce, in violation of the provisions of the Constitution of the United States whereby the Congress of the United States is given exclusive power to regulate commerce between the several States of the United States; and (3) the said act provides for the denial, and the said assessment does deny, to your orator the equal protection of the laws of said State, in violation of the amendment to the Constitution of the United States whereby each State is prohibited to deny to any person within its jurisdiction the equal protection of its laws; and (4) the said act provides for an assessment of property for taxation and the taxation thereof, and the said assessment so made by the said board of railrord commissioners assesses your orator's property for taxation without regard to its value and in excess of its value; and (5) the said act provides for the assessment of property for taxation in a manner and by a method and by different persons and officers provided and required by the laws of the State of Arkansas in respect to the same kinds of property owned by other persons within said State, and of which the same use is made and under the same circumstances and conditions, in violation of the constitution of the State of Arkansas and in violation of the amendment to the Constitution of the United States which prohibits any State to deny to any person within its jurisdiction the equal protection of its laws.

28 That, pursuant to the action of the board of railroad commissioners hereinbefore set forth and pursuant to the aforesaid act of the General Assembly of the State, the defendant Henry B. Armistead, who is also secretary of state for the State of Arkansas, has certified the said several assessments to the county assessors for the several counties of the State, as hereinbefore set forth, who have listed the same as property owned by your orator and subject to taxation for the year 1893 in said several counties, and have returned the said assessments to the county clerks of the said counties, defendants herein.

That by the law of the State of Arkansas it is the duty of the several county clerks aforesaid to make out the tax books for their respective counties and to enter the said several assessments thereon, and to levy the taxes thereon at the rate affixed for State, county, and all other purposes, and extend the same upon said tax books and deliver the same to the tax-collector, together with a warrant authorizing and requiring the collection of the same.

That by the law of said State the taxes as assessed and levied will become and be apparent liens upon your petitioner's property and constitute a cloud thereon, and your orator will, unless relief be granted herein, be subjected to and harrassed by a multiplicity of suits in order to remove such clouds upon its title.

That, notwithstanding the facts herein set out, the said defendants claim and give out that the said act of the General Assembly is a

valid law and the said assessments valid and binding upon your
orator, and unless restrained by the orders and process of
29 this court the said several county clerks, defendants herein,
will proceed to enter the said assessments upon the tax books
in their respective counties, and will proceed to levy the taxes
thereon for State, county, and all other purposes at the rates fixed
therefor, and extend the same upon the said tax books as taxes due
and to be collected from your orator, and will deliver the same to
the tax-collector for their respective counties, with a warrant for
the collection of the same, to the great and irreparable loss and
injury of your orator and for which there is no adequate remedy at
law; and your orator hereby offers to pay all taxes that may be
justly due to the State of Arkansas and to any county, city, or town
therein situated.

And because your orator can only obtain adequate relief in this
court and to the end that the defendants may, if they can, show
why your orator should not have the relief herein prayed and may
make full disclosure and discovery of all the matters aforesaid, and,
according to the best and utmost of their knowledge, information,
and belief, make full, true, and perfect answers to the averments of
this bill of complaint, and especially that the said defendants, William
M. Fishback, Henry B. Armistead, and Charles B. Mills, be
required to show whether or not they, as the board of railroad commissioners
of the State of Arkansas, found and fixed the value of
the entire capital stock of your orator, and if they did, then show
what value they found and, specifically, what property they took
into consideration as constituting said capital stock and where the
same was situated and the method and means by which they ascertained
and fixed the value of the same, but not under oath, the
answer under oath being hereby expressly waived, your orator
prays that the act of the General Assembly of the State of
30 Arkansas entitled "An act to assess and collect taxes from
certain corporations," hereinbefore referred to, may be decreed
to be unconstitutional and void, and the act of the said board
of railroad commissioners assessing your orator's property for taxation
as aforesaid may be decreed to be cancelled and of no effect,
and that each and all of the said defendants and all persons acting
under them may be perpetually restrained. Your orator further
prays that a writ of injunction be issued out of and under the seal
of this court, commanding and perpetually enjoining and restraining
the said defendants and all persons acting under them from in
any manner proceeding, pursuant to the said act of the General
Assembly of the State of Arkansas or pursuant to the said assessment
of the said board of railroad commissioners, to execute the
said act or the said assessment made as aforesaid; and that each of
the said defendants, county clerks as hereinbefore alleged, may be
specifically restrained and enjoined from entering the said several
assessments upon the tax books of their respective offices and from
levying any tax thereon or extending the same upon the tax books
of their respective counties, and from issuing any warrant for the
collection of the same.

And your orator further prays that a provisional injunction or restraining order be issued, restraining the said defendants, each and all of them, as aforesaid, during the pendency of this cause and until final decree herein, and for such other and further relief as in equity and good conscience your orator may be entitled to.

May it please your honors to grant unto your orator not only the writs of injunction hereinbefore prayed for, but also a writ of
31 subpœna of the United States of America, directed to the said
William M. Fishback, Henry B. Armistead, and Charles B. Mills, constituting the board of railroad commissioners for the State of Arkansas; J. W. Allen, county clerk of the county of Arkansas, in said State; R. R. Radford, county clerk of the county of Ashley, in said State; B. F. Langston, county clerk of the county of Bradley, in said State; N. T. Means, county clerk for the county of Calhoun, in said State; Charles L. Mead, county clerk of the county of Chicot, in said State; A. W. Wilson, county clerk of the county of Clark, in said State; B. B. Miffle, county clerk of the county of Clay, in said State; Woodson Mosely, county clerk of the county of Cleveland, in said State; D. R. Smith, county clerk of the county of Columbia, in said State; C. M. Anderson, county clerk of the county of Craighead, in said State; P. D. Scott, county clerk of the county of Crawford, in said State; Samuel Keel, county clerk of the county of Crittenden, in said State; J. M. Levesque, county clerk of the county of Cross, in said State; G. A. Clark, county clerk of the county of Dallas, in said State; M. W. Quilling, county clerk of the county of Desha, in said State; R. L. Hardy, county clerk of the county of Drew, in said State; E. M. Morgan, county clerk of the county of Faulkner, in said State; T. C. Moore, county clerk of the county of Franklin, in said State; J. R. Miller, county clerk of the county — Greene, in said State; J. Ford Johnson, county clerk of the county of Hempstead, in said State; W. W. Dutton, county clerk of the county of Hot Spring, in said State; W. R. Bevens, county clerk of the county of Independence, in said State; George A. Lockard, county clerk of the county of Jackson, in said State; G. E. Greenfield, county clerk of the county of Jefferson, in said State; R. L. Bunch, county clerk of
the county of Johnson, in said State; B. F. Wheat, county
32 clerk of the county of La Fayette, in said State; J. R. Sloan,
county clerk of the county of Lawrence, in said State; W. W. Foreman, county clerk of the county of Lee, in said State; H. D. Avery, county clerk of the county of Lincoln, in said State; W. H. Loman, county clerk of the county of Lonoke, in said State; J. V. Scott, county clerk of the county of Miller, in said State; J. A. Garret, county clerk of the county of Monroe, in said State; Alex. Vaughan, county clerk of the county of Nevada, in said State; W. P. Cawthon, county clerk of the county of Ouachita, in said State; J. C. Rembert, county clerk of the county of Phillips, in said State; A. A. Coppage, county clerk of the county of Poinsett, in said State; George E. Howard, county clerk of the county of Pope, in said State; Emmett Vaughan, county clerk of the county of Prairie, in said State; John Brodie, county clerk of the county of Pulaski, in said State; Joseph T. Robinson, county clerk of the county of Randolph,

in said State; W. H. Evans, county clerk of the county of Saline, in said State; C. L. Howe, county clerk of the county of Sebastian, in said State; F. Laughinghouse, county clerk of the county of St. Francis, in said State; C. W. Hearin, county clerk of the county of Union, in said State; C. S. George, county clerk of the county of White, in said State, and Ed. Roddy, county clerk of the county of Woodruff, in said State, commanding them on a certain day to appear and answer unto this bill of complaint, and to abide by and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

ROSE, HEMINGWAY & ROSE,
For Plaintiff.

33 UNITED STATES OF AMERICA,
State of Missouri, Eastern District, } *ss:*

On this day came before me, a commissioner of said court, L. C. Baker, who, being first duly sworn, deposed that he is an agent of the above-named plaintiff, and that the facts set forth in the foregoing bill are true.

L. C. BAKER.

Sworn to and subscribed before me this 29th day of December, 1893.

[SEAL.] T. L. CRAWFORD,
U. S. Commissioner.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, H. B. Armistead, secretary of state of the State of Arkansas, do hereby certify that the attached is a true and perfect copy of the assessed value of all property belonging to or operated by the Western Union Telegraph Company on the first Monday in July, 1892, located in the several counties in the State of Arkansas and in the cities and incorporated towns in said counties as found by the board of railroad commissioners of said State.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Little Rock, this 14th day of December, 1893.

H. B. ARMISTEAD,
Secretary of State,
[SEAL.] By E. B. JETT, *Deputy.*

Value of Property Belonging to or Operated by the Western Union Telegraph Company on the First Monday in July, 1892, *Located in the Several Counties of this State and in the Cities and Incorporated Towns in said Counties as Fixed by the Board of Railroad Commissioners of this State.*

County.	No. of miles.	Value per mile.	Total value in county.	Cities and towns.	Mileage.	Total in cities or towns.
Arkansas	18.18	$195 00	$3,545 00	Goldman	.26	$51 00
Ashley	28	"	5,460 00			
Baxter						
Benton	28.75	"	5,606 00	Rogers	1.53	298 00
Boone						
Bradley	5.37	"	1,047 00	Warren	1.00	195 00
Calhoun	10.33	"	2,014 00			
Carroll	12	"	2,340 00			
Chicot	16.03	"	3,126 00			
Clark	40.17	"	7,883 00	Arkadelphia	.68	133 00
				Gurdon	.41	78 00
Clay	41.02	"	7,999 00	Corning	.57	111 00
				St. Francis	.50	98 00
				Greenway	.26	51 00
				Rector	.64	125 00
				Piggott	1.00	195 00
Cleburne						
Cleveland	21.37	"	4,167 00			
Columbia	29.47	"	5,747 00	Buckner	1.00	195 00
				Waldo	1.00	195 00
				Magnolia	.88	72 00
				McNeil	1.00	195 00
Conway	22.14	"	4,317 00	Plummerville	.48	94 00
				Morrillton	1.02	199 00
Craighead	77.65	"	15,141 00	Jonesboro'	2.48	484 00
Crawford	55.61	"	10,884 00	Van Buren	1.93	376 00
				Alma	.53	103 00
Crittenden	75.01	"	14,627 00			
Cross	71.05	"	13,855 00	Wynne	.80	156 00

Dallas	5.71	"	1,113 00	Fordyce	.53	103 00
Desha	45.47	"	8,867 00	Arkansas City	.91	177 00
Drew	39.40	"	7,683 00	Monticello	.60	117 00
Faulkner	19.92	"	3,884 00	Conway	1.81	353 00
Franklin	24.37	"	4,752 00	Ozark	1.50	293 00
				Mulberry	.58	113 00
				Altus	.50	98 00
Fulton	14.76	"	2,878 00	Mammoth Springs	.55	107 00
Garland	10.09	"	1,968 00	Hot Springs	.75	146 00
Grant						
Greene	59.51	"	11,604 00	Paragould	1.27	248 00
				Marmaduke	.85	166 00
Hempstead	21.85	"	4,261 00	Hope	.72	140 00
				Fulton	.41	80 00
Hot Spring	38.48	"	7,504 00	Malvern	1.81	353 00
Howard						
Independence	33.57	"	6,546 00	Batesville	1.43	279 00
Izard						
Jackson	68.66	"	13,389 00	Newport	1.85	361 00
Jefferson	93.60	"	18,252 00	Pine Bluff	3.92	764 00
Johnson	31.44	"	6,131 00	Clarksville	1.61	314 00
				Coal Hill	.87	170 00
La Fayette	37	"	7,215 00	Lewisville	.76	148 00
Lawrence	58.06	"	11,322 00	Walnut Ridge	.44	86 00
				Hoxie	.43	84 00
Lee	19.20	"	3,744 00	Black Rock	1.33	259 00
				Portia	1.58	308 00
				Marianna	.90	176 00
Lincoln	13.50	"	2,633 00	Haynes	.50	98 00
Little River						
Logan						
Lonoke	49.82	"	9,715 00	Lonoke	.50	98 00
				Carlisle	.50	98 00
Madison	15.57	"	3,036 00	St. Paul	.88	172 00
Marion						
Miller	39.65	"	7,732 00	Texarkana	.93	181 00
Mississippi						
Monroe	56.88	"	11,092 00	Brinkley	2.50	488 00
Montgomery						

Value of Property Belonging to or Operated by the Western Union Telegraph Company, &c.—Continued.

County.	No. of miles.	Value per mile.	Total value in county.	Cities and towns.	Mileage.	Total in cities or towns.
Nevada	13.82	$195 00	$2,695 00	Prescott	1.42	$277 00
Newton						
Ouachita	81.21	"	15,836 00	Camden	3.34	651 00
				Stephens	.45	88 00
				Bearden	.40	78 00
Perry						
Phillips	18.36	"	3,580 00	Helena	.20	38 00
Pike						
Poinsett	61.16	"	11,926 00	Harrisburg	.56	109 00
Polk						
Pope	27.55	"	5,372 00	Russellville	1.37	267 00
				Atkins	1.52	296 00
Prairie	28.43	"	5,544 00	Devall's Bluff	.32	62 00
				Hazen	.81	158 00
Pulaski	80.27	"	15,653 00	Little Rock	6.64	1,295 00
				Alexander	.34	66 00
Randolph	10.59	"	2,065 00			
Saline	27.08	"	5,281 00	Benton	.44	86 00
				Woodson	.40	78 00
Scott	.59	"	115 00	Mansfield	.59	115 00
Searcy						
Sebastian	55.48	"	10,819 00	Ft. Smith	3.04	593 00
				Jenser	.16	31 00
				Halken	.53	103 00
Sevier						
Sharp	17.78	"	3,467 00			
St. Francis	67.69	"	13,200 00	Forrest City	1.81	353 00
Stone						
Union	16.30	"	3,179 00	El Dorado	.57	111 00
Van Buren						
Washington	54.53	"	10,614 00	Fayetteville	1.43	279 00

White	55.19	"	10,762 00	Bald Knob	1.20	234 00
				Beebe	1.30	254 00
				Judsonia	.46	90 00
Woodruff	67.69	"	13,200 00	Acorey	.60	123 00
				Cotton Plant	.35	68 00
Yell						
Totals	2,032.28		396,387 00		81.86	$15,985 00

35 NOTE.—The amounts rendered for cities and towns are not to be added to amounts rendered for counties.

Bill endorsed: Filed January 2nd, 1894. Ralph L. Goodrich, clerk.

36 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 23rd day of October, anno Domini one thousand eight hundred and ninety-three, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on January 29, 1894:

WESTERN UNION TELEGRAPH COMPANY
vs. 1115.
WILLIAM M. FISHBACK *et al.*

Comes the plaintiff, by Rose, Hemingway & Rose, Esqs., its solicitors, and files herein its amended bill, and come the defendants, by James P. Clarke, Esq., attorney general of the State of Arkansas, and file herein their demurrer to the bill and amended bill, and the same is heard, argued, and submitted to the court, and the court not being now well and sufficiently advised in the premises takes time to consider of its judgment herein; which amended bill is in words and figures as follows:

In the Circuit Court of the United States within and for the Eastern District of Arkansas, Western Division.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
WILLIAM M. FISHBACK *et al.*

Supplemental Bill of Complaint.

37 To the honorable judges of said court:

Par. 1. Your orator now avers that since the filing of the original bill of complaint in this cause the several defendants named in the original bill as county clerks of the several counties therein named have, pursuant to the assessment of your orator's property by the board of railroad commissioners set forth in the bill, made out the tax books for their said several counties and have entered the said several assessments thereon against your orator and have levied the taxes thereon at the rate fixed for State, county, and all other purposes and have extended the same upon the tax books and have delivered the tax books to the several tax-collectors of their respective counties, together with a warrant authorizing and requiring the collection of the said taxes.

Par. 2. That P. M. Black is the tax-collector for the county of Arkansas; that Jno. P. Clark is the tax-collector for the county of Ashley; that J. S. Lee is the tax-collector for the county of Bradley; that R. H. Cone is the tax-collector for the county of Calhoun; that T. P. Johnson is the tax-collector for the county of Chicot; that Jas. H. Abraham is the tax-collector for the county of Clark; that R. L. Hancock is tax-collector for the county of Clay; that M. M. Smith is tax-collector for the county of Cleveland; that T. J. Grimmett is tax-collector for the county of Columbia; that B. G. White is the tax-collector for the county of Conway; that A. C. Broadaway is the tax-collector for the county of Craighead; that John Steward is the tax-collector for the county of Crawford; that W. W. Swepton is the tax-collector for the county of Crittenden; that John W. Killough is the tax-collector for the
county of Cross; that E. R. Shugot is the tax-collector
38 for the county of Dallas; that H. L. Henry is the tax-
collector for the county of Desha; that L. B. Morgan is the tax-collector for the county of Drew; that J. B. Wilson is the tax-collector for the county of Faulkner; that W. P. Richardson is the tax-collector for the county of Franklin; that John P. Thompson is the tax-collector for the county of Greene; that James C. Jones is the tax-collector for the county of Hempstead; that B. C. Fitzhugh is the tax-collector for the county of Hot Spring; that T. J. Owens is the tax-collector for the county of Independence; that James M Hobgood is the tax-collector for the county of Jackson; that A. C. Thompson is the tax-collector for the county of Jefferson; that J. H. Powers is the tax-collector for the county of Johnson; that Clint Le May is the tax-collector for the county of La Fayette; that Wm. Childers is the tax-collector for the county of Lawrence; that W. T. Derrick is the tax-collector for the county of Lee; that James M. Meroney is the tax-collector for the county of Lincoln; that James H. Hicks is the tax-collector for the county of Lonoke; that A. S. Blythe is the tax-collector for the county of Miller; that T. T. Bateman is the tax-collector for the county of Monroe; that W. W. Munn is tax-collector for the county of Nevada; that A. Hamilton is the tax-collector for the county of Ouachita; that Lee Pendergrass is the tax-collector for the county of Phillips; that John B. Gantt is the tax-collector for the county of Poinsett; that W. J. Johnson is the tax-collector for the county of Pope; the A. S. Rheinhardt is the tax-collector for the county of Prairie; that Anderson Mills is the tax-collector for the county of Pulaski; that W. H. Hogan is the tax-collector for the county of Randolph; that J. F. Shoppack is the tax-collector for the county of Saline; that T. W. Bugg is the tax-collector for the county of
Sebastian; that W. E. Williams is the tax-collector for the county
39 of St. Francis; that N. C. Norris is the tax-collector for the
county of Union; that T. L. Harder is the tax-collector for the county of White; that M. H. Patterson is the tax-collector for the county of Woodruff, all in the said State of Arkansas and each of said persons named in this paragraph as tax-collector is now and was at

the time of the commencement of this suit a citizen of the State of Arkansas.

Par. 3. That unless restrained by the order and process of this court the said several tax-collectors will proceed to collect the said taxes so levied in the said several counties by distraint and sale of the property of your orator for the amount of said several levies, to the great and irreparable loss and injury of your orator and interference with and obstruction of your orator's interstate business, as set forth in the original bill, and will thereby greatly embarrass and prevent your orator from performing its duties to the public as a common carrier, and whereby your orator will be involved in a great multiplicity of suits, and for all of which your orator has no adequate remedy at law.

Par. 4. Your orator further avers that it does not seek to escape any just and legal taxation of its property subject to taxation by the State of Arkansas, but, on the contrary, is now and has always been ready and willing to pay all such taxes; but your orator says it cannot pay or tender payment of taxes upon its property or pay the same into court for the reason that no assessment of the same has been made and your orator is unable to ascertain or determine the amount of its taxes; and your orator avers that if the court shall
be of the opinion that its property may yet be legally as-
40 sessed for taxation your orator is ready and willing to sub-
mit to such assessment and will promptly pay the taxes
found due thereby.

Par. 5. To the end, therefore, that your orator may have some relief, by provisional or perpetual injunction or otherwise, against the said several tax-collectors herein named, which is prayed in the original bill and which is now prayed for as fully as if repeated herein, and to the end that the said several tax-collectors may be perpetually enjoined from proceeding in any manner to collect the said taxes or any part of the same by distraint and sale of your orator's property or otherwise, your orator prays that the said several tax-collectors be made parties defendant to this suit; that the writ of perpetual injunction prayed in the original bill may also perpetually enjoin the said several tax-collectors and all persons acting through or under them or either of them from in any manner proceeding to execute the act of the General Assembly of the State of Arkansas set forth in the original bill or the assessment of your orator's property set forth in the original bill by the board of railroad commissioners, and from in any manner proceeding to collect the said taxes or any part thereof by distraint and sale or otherwise.

Par. 6. And your orator further prays that a provisional injunction or restraining order be entered restraining the said several tax-collectors, each and all of them, during the pendency of this cause and until final decree herein, from proceeding to collect said taxes, and for such other and further relief as in equity and good conscience your orator may be entitled to.

May it please your honors to grant unto your orators not only

the *rights* of injunction, provisional or perpetual, prayed for
41 in the original bill as well as in this supplemental bill, but
also a writ of subpœna of the United States of America, directed to the said P. M. Black, tax-collector of the county of Arkansas; John P. Clark, tax-collector of the county of Ashley; J. S. Lee, tax-collector for the county of Bradley; R. H. Cone, tax-collector for the county of Calhoun; T. P. Johnson, tax-collector for the county of Chicot; Jas. H. Abraham, tax-collector for the county of Clark; R. L. Hancock, tax-collector for the county of Clay; M. M. Smith, tax-collector for the county of Cleveland; T. J. Grimmett, tax-collector for the county of Columbia; B. G. White, tax-collector for the county of Conway; A. C. Braodaway, tax-collector for the county of Craighead; John Steward, tax-collector for the county of Crawford; W. W. Swepton, tax-collector for the county of Crittenden; John W. Killough, tax-collector for the county of Cross; E. R. Shugot, tax-collector for the county of Dallas; H. L. Henry, tax-collector for the county of Desha; L. E. Morgan, tax-collector for the county of Drew; J. R. Wilson, tax-collector for the county of Faulkner; W. P. Richardson, tax-collector for the county of Franklin; John R. Thompson, tax-collector for the county of Greene; James C. Jones, tax-collector for the county of Hempstead; B. C. Fitzhugh, tax-collector for the county of Hot Spring; T. J. Owens, tax-collector for the county of Independence; James M. Hobgood, tax-collector for the county of Jackson; A. C. Thompson, tax-collector for the county of Jefferson; J. H. Powers, tax-collector for the county of Johnson; Clint. Le May, tax-collector for the county of La Fayette; Wm. Childers, tax-collector of the county of Lawrence; W. T. Derrick, tax-collector for the cou-ty of Lee; J. H. Meroney, tax-collector for the county of Lincoln; James H. Hicks, tax-collector for the county of Lonoke; A. S. Blythe, tax-collector
42 for the county of Miller; T. T. Bateman, tax-collector for the
county of Monroe; W. M. Munn, tax-collector for the county of Nevada; A. Hamilton, tax-collector for the county of Ouachita; Lee Pendergrass, tax-collector for the county of Phillips; John R. Gantt, tax-collector for the county of Poinsett; W. J. Johnson, tax-collector for the county of Pope; A. S. Rheinhardt, tax-collector for the county of Prairie; Anderson Mills, tax-collector for the county of Pulaski; W. H. Hogen, tax-collector for the county of Randolph; J. F. Shoppack, tax-collector for the county of Saline; T. W. Bugg, tax-collector for the county of Sebastian; W. E. Williams, tax-collector for the county of St. Francis; N. C. Norris, tax-collector for the county of Union; T. L. Narder, tax-collector for the county of White, and M. H. Patterson, tax-collector for the county of Woodruff, commanding them on a certain day to appear and answer unto the original bill and this supplemental bill of complaint and to abide by and perform such order and decree in the premises as to your honors may seem proper and as may be required by the principles of equity and *and* good conscience.

ROSE, HEMINGWAY & ROSE,
For Plaintiff.

Endorsed: Filed Jan. 29, 1894. Ralph L. Goodrich, clerk.

the time of the commencement of this suit a citizen of the State of Arkansas.

Par. 3. That unless restrained by the order and process of this court the said several tax-collectors will proceed to collect the said taxes so levied in the said several counties by distraint and sale of the property of your orator for the amount of said several levies, to the great and irreparable loss and injury of your orator and interference with and obstruction of your orator's interstate business, as set forth in the original bill, and will thereby greatly embarrass and prevent your orator from performing its duties to the public as a common carrier, and whereby your orator will be involved in a great multiplicity of suits, and for all of which your orator has no adequate remedy at law.

Par. 4. Your orator further avers that it does not seek to escape any just and legal taxation of its property subject to taxation by the State of Arkansas, but, on the contrary, is now and has always been ready and willing to pay all such taxes; but your orator says it cannot pay or tender payment of taxes upon its property or pay the same into court for the reason that no assessment of the same has been made and your orator is unable to ascertain or determine the amount of its taxes; and your orator avers that if the court shall
be of the opinion that its property may yet be legally as-
40 sessed for taxation your orator is ready and willing to sub-
mit to such assessment and will promptly pay the taxes found due thereby.

Par. 5. To the end, therefore, that your orator may have some relief, by provisional or perpetual injunction or otherwise, against the said several tax-collectors herein named, which is prayed in the original bill and which is now prayed for as fully as if repeated herein, and to the end that the said several tax-collectors may be perpetually enjoined from proceeding in any manner to collect the said taxes or any part of the same by distraint and sale of your orator's property or otherwise, your orator prays that the said several tax-collectors be made parties defendant to this suit; that the writ of perpetual injunction prayed in the original bill may also perpetually enjoin the said several tax-collectors and all persons acting through or under them or either of them from in any manner proceeding to execute the act of the General Assembly of the State of Arkansas set forth in the original bill or the assessment of your orator's property set forth in the original bill by the board of railroad commissioners, and from in any manner proceeding to collect the said taxes or any part thereof by distraint and sale or otherwise.

Par. 6. And your orator further prays that a provisional injunction or restraining order be entered restraining the said several tax-collectors, each and all of them, during the pendency of this cause and until final decree herein, from proceeding to collect said taxes, and for such other and further relief as in equity and good conscience your orator may be entitled to.

May it please your honors to grant unto your orators not only

the *rights* of injunction, provisional or perpetual, prayed for
41 in the original bill as well as in this supplemental bill, but
also a writ of subpœna of the United States of America,
directed to the said P. M. Black, tax-collector of the county of Arkansas;
John P. Clark, tax-collector of the county of Ashley; J. S.
Lee, tax-collector for the county of Bradley; R. H. Cone, tax-collector
for the county of Calhoun; T. P. Johnson, tax-collector for
the county of Chicot; Jas. H. Abraham, tax-collector for the county
of Clark; R. L. Hancock, tax-collector for the county of Clay; M. M.
Smith, tax-collector for the county of Cleveland; T. J. Grimmett,
tax-collector for the county of Columbia; B. G. White, tax-collector
for the county of Conway; A. C. Braodaway, tax-collector for the
county of Craighead; John Steward, tax-collector for the county of
Crawford; W. W. Swepton, tax-collector for the county of Crittenden;
John W. Killough, tax-collector for the county of Cross; E. R.
Shugot, tax-collector for the county of Dallas; H. L. Henry, tax-collector
for the county of Desha; L. E. Morgan, tax-collector for
the county of Drew; J. R. Wilson, tax-collector for the county of
Faulkner; W. P. Richardson, tax-collector for the county of Franklin;
John R. Thompson, tax-collector for the county of Greene;
James C. Jones, tax-collector for the county of Hempstead; B. C.
Fitzhugh, tax-collector for the county of Hot Spring; T. J. Owens,
tax-collector for the county of Independence; James M. Hobgood,
tax-collector for the county of Jackson; A. C. Thompson, tax-collector
for the county of Jefferson; J. H. Powers, tax-collector for the
county of Johnson; Clint. Le May, tax-collector for the county of
La Fayette; Wm. Childers, tax-collector of the county of Lawrence;
W. T. Derrick, tax-collector for the county of Lee; J. H. Meroney,
tax-collector for the county of Lincoln; James H. Hicks, tax-collector
for the county of Lonoke; A. S. Blythe, tax-collector
42 for the county of Miller; T. T. Bateman, tax-collector for the
county of Monroe; W. M. Munn, tax-collector for the county
of Nevada; A. Hamilton, tax-collector for the county of Ouachita;
Lee Pendergrass, tax-collector for the county of Phillips; John R.
Gantt, tax-collector for the county of Poinsett; W. J. Johnson, tax-collector
for the county of Pope; A. S. Rheinhardt, tax-collector for
the county of Prairie; Anderson Mills, tax-collector for the county
of Pulaski; W. H. Hogen, tax-collector for the county of Randolph;
J. F. Shoppack, tax-collector for the county of Saline; T. W. Bugg,
tax-collector for the county of Sebastian; W. E. Williams, tax-collector
for the county of St. Francis; N. C. Norris, tax-collector for
the county of Union; T. L. Narder, tax-collector for the county of
White, and M. H. Patterson, tax-collector for the county of Woodruff,
commanding them on a certain day to appear and answer
unto the original bill and this supplemental bill of complaint and
to abide by and perform such order and decree in the premises as
to your honors may seem proper and as may be required by the
principles of equity and *and* good conscience.

ROSE, HEMINGWAY & ROSE,
For Plaintiff.

Endorsed: Filed Jan. 29, 1894. Ralph L. Goodrich, clerk.

Which demurrer to bill is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

The joint and several demurrer of the defendants, W. M. Fishback, H. B. Armistead, and C. B. Mills *et al.*, to the bill of complaint herein of the Western Union Telegraph Company. 43

These defendants, by protestation, not confessing any of the matters in and by said bill as amended complained of to be true in manner and form as the same are set forth, severally say that they are advised that there is no matter or thing in said bill good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur accordingly; and for cause of demurrer say that said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants. Wherefore, and for divers other errors in said bill contained and appearing on the face thereof, these defendants do demur thereto, and humbly crave the judgment of this honorable court whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid; and these defendants humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JAMES P. CLARKE,
Attorney General, for Defendants.

I hereby certify that in my opinion the above and foregoing demurrer is well founded in point of law.

JAMES P. CLARKE,
Of Counsel for Defendants.

THE STATE OF ARKANSAS, }
Pulaski County. }

C. B. Mills, being first duly sworn, deposes and says that he is the auditor of the State aforesaid and one of the defendants in the above entitled action; that the above and foregoing demurrer is not interposed for delay; further deponent sayeth not.

C. B. MILLS.

Sworn to and subscribed before me this Jan. 24, 1894.

GORDON FRIERSON, *N. P.*

Endorsed: Filed Jan. 29, 1894. Ralph L. Goodrich, clerk.

44 And on February 20th, 1894, the following proceedings were had, to wit:

WESTERN UNION TELEGRAPH COMPANY
vs.
WILLIAM M. FISHBACK *et al.* } 1115.

Now, on this day, come the parties to said cause, the complainant, by its solicitors, Rose, Hemmingway & Rose, Esqs., and the defendants, by J. P. Clarke, Esq., attorney general of the State of Arkansas, and thereupon the defendants filed their demurrer to the original and supplemental bills of complaint in said cause, and by consent of parties said demurrer is argued and submitted to the court, and the court, being well and sufficiently advised in the premises, doth overrule the same; and thereupon, by consent of parties, the plaintiff dismisses its bill of complaint as to the several county clerks mentioned in said original bill of complaint, and the defendants, the said several tax-collectors mentioned in the plaintiff's amended and supplemental bill of complaint, elect to stand on their demurrer and decline to plead further in said cause.

It is accordingly ordered and decreed that the defendants and each and every of them, their agents and deputies, be perpetually restrained and enjoined from taking any steps or proceeding in any manner to enforce the collection of taxes assessed against the property of the Western Union Telegraph Company under the assessment made by defendants Wm. M. Fishback, Henry B. Armistead, and Charles B. Mills, in their capacity as a board of railroad commissioners for the said State of Arkansas, under the provisions of an
act of the General Assembly entitled "An act to assess and
45 collect taxes from certain corporations," approved April 8th,
1893.

It is further ordered that the defendants pay all costs incurred in and about this proceeding. Thereupon the defendants here in open court file their assignment of errors and petition for appeal to the Supreme Court of the United States, which is granted upon defendants filing an appeal bond herein in the sum of two hundred and fifty dollars, with sureties to be approved by the judge of this court; and the plaintiff here now waives the issuance and service of citation, and the appellants present their said bond, which is by the judge approved; which assignment of errors is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

W. M. FISHBACK *et al.*
vs.
WESTERN UNION TELEGRAPH COMPANY. } Assignment of Errors.

The appellants herein make the following assignment of errors in the above-entitled cause, namely:

The court erred in overruling the demurrer of the appellants, defendants below, to the complaint of the plaintiff below and appellee here, and in holding the act of the General Assembly of the State of Arkansas approved April 8th, 1893, entitled an "Act to assess and collect taxes from certain corporations," to be void. Wherefore, for the errors above assigned, the appellants pray that the decree rendered in this case be reversed.

JAMES P. CLARKE,
Attorney General, Sol. for Appellants.

46 Which petition for appeal is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

WESTERN UNION TELEGRAPH COMPANY
vs.
W. M. FISHBACK *et al.*

Now, on this 20th day of February, 1894, came the defendants and pray an appeal in this cause to the Supreme Court of the United States on the ground that the decision herein involves the validity of a statute of the State of Arkansas, and the court actually decides herein that the same is invalid.

JAMES P. CLARKE,
Attorney General, Solicitor for Defendants.

Endorsed: Filed February 20th, 1894. Ralph L. Goodrich, clerk.

Which bond is in the words and figures as follows, to wit:

Know all men by these presents that we, the undersigned, are held and firmly bound unto the Western Union Telegraph Company in the full and just sum of two hundred and fifty dollars, to be paid to it or its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, 1894.

47 Whereas lately, at a term of the circuit court of the United States for the western division of the eastern district of Arkansas, in a suit depending in said court between the Western Union Telegraph Company as complainant and the obligors herein as defendants, except James P. Clarke, who signs this bond as surety, a final decree was rendered against the said obligors, except Clarke, and the said obligors have appealed the said cause to the Supreme Court of the United States:

Now, the conditions of the above obligation are such that if the said obligors, except Clarke, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation is to be void; else to remain in full force and effect.

W. M. FISHBACK. [L. S.]
H. B. ARMISTEAD. “
R. H. CONE. “
R. L. HANCOCK. “
B. G. WHITE. “
W. W. SWEPTON. “
H. L. HENRY. “
W. P. RICHARDSON. “
B. C. FITZHUGH. “
A. G. THOMPSON. “
WM. CHILDERS. “
JAS. H. HICKS. “
W. M. MUNN. “
JOHN B. GANTT. “
ANDERSON MILLS. “
T. W. BUGG. “
P. M. BLACK. [L. S.]
C. B. MILLS. “
T. P. JOHNSON. “
M. M. SMITH. “
A. C. BROADAWAY. “
JOHN W. KILLOUGH. “
L. E. MORGAN. “
JNO. R. THOMPSON. “
T. J. OWENS. “
J. H. POWERS. “
W. T. DERRICK. “
A. S. BLYTHE. “
A. HAMILTON. “
W. J. JOHNSON. “
W. H. HOGEN. “
W. E. WILLIAMS. “
JNO. P. CLARK. [SEAL.]
J. S. LEE. “
JAS. H. ABRAHAM. “
T. J. GRIMMETT. “
JOHN STEWARD. “
E. R. SHUGOT. “
J. B. WILSON. “
JAMES C. JONES. “
JAMES M. HOBGOOD. “
CLINT LE MAY. “
J. M. MERONEY. “
T. T. BATEMAN. “
LEE PENDERGRASS. “
A. S. REINHARDT. “
J. F. SHOPACK. “
H. C. NORRIS. “
T. L. HARDER. [L. S.]
M. H. PATTERSON. [L. S.]
JAMES P. CLARKE, *Surety.* [SEAL.]

This bond is approved this 20th day of February, 1894.

JNO. A. WILLIAMS, *Judge*.

Endorsed: Filed February 20th, 1894. Ralph L. Goodrich, clerk.

49 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and assignment of errors and of all proceedings in the case of The Western Union Telegraph Company *vs.* Wm. M. Fishback *et al.*

In witness whereof I have hereunto set my hand and the seal of said court this 23rd day of February, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

The Seal of the Circuit Court,
Western Division of East.
Dist. Ark., U. S. A.

Attest: RALPH L. GOODRICH, *Clerk*.

Endorsed on cover: Case No. 15,525. E. Arkansas C. C. U. S. Term No., 656. William M. Fishback *et al.*, appellants, *vs.* The Western Union Telegraph Company. Filed March 12th, 1894.

(15,526.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 657.

WILLIAM M. FISHBACK ET AL., APPELLANTS,

vs.

THE PACIFIC EXPRESS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 14, 1894.

1 Be it remembered that on the 25th day of October, 1893, came into the office of the clerk of the circuit court of the United States in and for the western division of the eastern district of Arkansas The Pacific Express Company, by Westel W. Morsman and J. M. Moore, Esqrs., its solicitors, and filed therein its bill of complaint against William M. Fishback *et al.;* which bill of complaint is in the words and figures following, to wit:

In the Circuit Court of the United States within and for the Eastern District of Arkansas.

THE PACIFIC EXPRESS COMPANY
v.
WILLIAM M. FISHBACK *et al.*

To the honorable judges of said court:

Your orator, The Pacific Express Company, a corporation, brings
this suit against William M. Fishback, Henry B. Armistead, and
Charles B. Mills, constituting the board of railroad commissioners
for the State of Arkansas; J. W. Allen, county clerk of the county
of Arkansas, in said State; R. R. Radford, county clerk for the
county of Ashley, in said State; B. F. Langston, county clerk of
the county of Bradley, in said State; T. N. Means, county clerk
of the county of Calhoun, in said State; Charles L. Mead, county
clerk of the county of Chicot, in said State; A. W. Wilson, county
clerk of the county of Clark, in said State; B. B. Biffle, county
clerk of the county of Clay, in said State; Woodson Mosely,
county clerk of the county of Cleveland, in said State;
2 D. R. Smith, county clerk of the county of Columbia, in
said State; J. C. Massey, county clerk of the county of Conway, in said State; C. M. Anderson, county clerk of the county
of Craighead, in said State; P. D. Scott, county clerk of the county
of Crawford, in said State; Samuel Keel, county clerk of the county
of Crittenden, in said State; J. M. Levesque, county clerk of the
county of Cross, in said State; N. A. Clark, county clerk of the
county of Dallas, in said State; M. W. Quilling, county clerk of the
county of Desha, in said State; R. L. Hardy, county clerk of the
county of Drew, in said State; E. M. Morgan, county clerk of the
county of Faulkner, in said State; T. C. Moore, county clerk of the
county of Franklin, in said State; J. R. Miller, county clerk of the
county of Greene, in said State; J. Ford Johnson, county clerk of
the county of Hempstead, in said State; W. W. Dutton, county
clerk of the county of Hot Spring, in said State; W. E. Bevens,
county clerk of the county of Independence, in said State; George
A. Lockard, county clerk of the county of Jackson, in said State;
G. E. Greenfield, county clerk of the county of Jefferson, in said
State; H. L. Bunch, county clerk of the county of Johnson, in said
State; B. P. Wheat, county clerk of the county of La Fayette, in said
State; J. H. Sloan, county clerk of the county of Lawrence, in said
State; W. W. Foreman, county clerk of the county of Lee, in said

State; H. D. Avery, county clerk of the county of Lincoln, in said State; W. H. Loman, county clerk of the county of Lonoke, in said State; J. V. Scott, county clerk of the county of Miller, in said State; J. A. Garrett, county clerk of the county of Monroe, in said State; Alex. Vaughan, county clerk of the county of Nevada, in said State; W. P. Cawthon, county clerk of the county of Ouachita, in said State; J. C. Rembert, county clerk of the county of Phillips, in said State; A. A. Coppage, county clerk of the county of
3 Poinsett, in said State; Geo. E. Howard, county clerk of the county of Pope, in said State; Emmet Vaughan, county clerk of the county of Prairie, in said State; John Brodie, county clerk of the county of Pulaski, in said State; Joseph T. Robinson, county clerk of the county of Randolph, in said State; W. H. Evans, county clerk of the county of Saline, in said State; C. H. Howe, county clerk of the county of Sebastian, in said State; F. Laughinghouse, county clerk of the county of St. Francis, in said State; C. W. Hearin, county clerk of the county of Union, in said State; C. S. George, county clerk of the county of White, in said State, and Ed. Roddy, county clerk of the county of Woodruff, in said State; and your orator says:

(1.) That your orator is incorporated under and by virtue of the laws of the State of Nebraska and is a citizen of said State, and each one of the defendants is a citizen of the State of Arkansas, and that the amount or value in controversy in this suit exceeds the sum of two thousand dollars, exclusive of interest and costs.

(2.) That on and prior to the 8th day of April, A. D. 1893, your orator was and at all times since has been engaged in carrying money and goods by express and for hire upon railroads, and your orator was during said period and is now what is known and usually designated as an express company, with its principal place of business and general offices at Omaha, in the State of Nebraska.

(3.) That your orator during the said period carried on its said business in many of the different States of the United States, including the State of Arkansas, taking money and goods for transportation from towns and points outside of the State of Arkansas and delivering the same at points or towns within said State of Arkansas, and taking money and goods for transportation from points
4 within the State of Arkansas and carrying the same out of said State and delivering them at points or towns situated in other States, and taking money and goods for transportation from points or towns outside the State of Arkansas and carrying the same through and across the State of Arkansas and delivering the same at towns or points situated in other States, and taking money and goods for transportation between points or towns each of which is within the State of Arkansas.

(4.) That in the prosecution of its business your orator did not own any line of railroad, in whole or in part, but it acquired by contract with the owners of railroads the right to have its messengers in charge of money and goods taken for transportation carried upon the passenger or express trains of railroad companies; that your

orator during the period aforesaid had such contracts with the Union Pacific Railway Company covering all of its lines and extending from Portland, Oregon, to Omaha, in the State of Nebraska; Kansas City, in the State of Missouri, and to points in the State of Texas, and many other points in various States; and with the Missouri Pacific Railway Company covering all of its lines, leased and controlled, extending from Denver, Omaha, Kansas City, and St. Louis, by means of its owned and leased or controlled lines, into, through, and across the State of Arkansas to many points within said State, as well as to many points south and west of said State; and with the Wabash Railroad Company covering all of its lines, extending from Chicago, in the State of Illinois; Detroit, in the State of Michigan, and Toledo, in the State of Ohio, to St. Louis and Kansas City, in the State of Missouri, and to Omaha, in the State of Nebraska, and many other points; and with many other railroad companies in different States of the United States, aggregat-
5 ing 20,206 miles.

That the Union Pacific Railway Company is a corporation organized under and created by the acts of the Congress of the United States, and the Missouri Pacific Railway Company is and was at the date aforesaid a corporation organized under and created by the laws of the State of Missouri, and the Wabash Railroad Company is and was at the date aforesaid a consolidated corporation organized under and created by the laws of the State of Ohio and other States, not including the State of Arkansas.

(5.) That at the date hereinbefore mentioned your orator was carrying on its business under and by virtue of a contract with the Missouri Pacific Railway Company upon the following lines of railroad in the State of Arkansas, to wit, the St. Louis, Iron Mountain and Southern Railway Company and branches, the Little Rock and Fort Smith Railway Company, the Kansas and Arkansas Valley Railway Company, and the Houston, Central Arkansas and Northern Railway Company, and also, by virtue of separate contracts with each, upon other lines, aggregating, together with the lines heretofore mentioned in this paragraph, 1,576 miles within said State of Arkansas, but upon each and every one of said lines your orator's said business was and at all times has been both interstate and intrastate, as heretofore set forth.

(6.) That by virtue of said contracts, in consideration of payments made and to be made and services performed and to be performed, and aggregating in most cases something more than one-half of the gross receipts of your orator's said business done over the respective railways, your orator acquired the right to have the money and goods entrusted to it for transportation, together
6 with a messenger in charge of the same, transported upon the express trains of the several railway companies from the points where your orator received the same for transportation to the points at which your orator undertook to deliver the same and nothing more.

(7.) That by an act of the General Assembly of the State of Arkansas entitled "An act to assess and collect taxes from certain corporations," approved April 8th, 1893, it was made the duty of any express company incorporated by the laws of any State of the United States and carrying on business within the State of Arkansas to make and file with the board of railroad commissioners of said State a statement showing in detail the following facts:

1st. A certified copy of the articles of incorporation under which the company so reporting was organized and carrying on its said business.

2nd. The amount of the capital stock of such company subscribed, whether designated as common or preferred stock, and showing the par value of each share and the market value of the same at the time of making such statement.

3rd. The total number of miles of railroad within or without the State of Arkansas over which such express company was carrying on its said business.

4th. The number of miles of railway within the State of Arkansas over which such company was carrying on its said business.

And it is further provided by said act that if the said board of railroad commissioners should have reason to believe that any statement contained in such report was false in any material matter it should be their duty to procure other information about the mat-
ters contained therein, and also that the said board should
7 have power and that it should be their duty to resort to other
sources of information in the event that any such corporation should fail or refuse to file the report aforesaid.

And it is further provided by the said act that upon the filing of such report by such corporation or upon the obtaining the information aforesaid the said board of railroad commissioners should proceed to ascertain the value of the entire capital stock of the corporation making such report, and thereupon fix the sum at which the property of such corporation should be assessed within the State of Arkansas for purposes of taxation by taking the same proportion of the aggregate value of the capital stock of said corporation as the number of miles of railway within the State of Arkansas over which such express company carried on its business should bear to the aggregate number of miles of railway within as well as without the State of Arkansas over and upon which the said express company should carry on its express business.

And by section 3 of said act it was further provided that after the said board of railroad commissioners should have ascertained the aggregate amount to be assessed against the property of such company the said board should then proceed to ascertain the parts of such aggregate valuation to be apportioned to the several counties in which said property should be subject to taxation by dividing the aggregate amount fixed as said taxable value in the State of Arkansas by the entire number of miles of railway over which such express company was carrying on its business in the entire State, and enacted that the result should be the value per mile of such capital stock for the purpose of taxation; and providing further that the value per mile of such capital stock thus ascertained should be multiplied by the number of miles of rail-

way lying and being situated in any county, and that
8 the product thereof should be the sum to be taxed in such
county; and providing further that it should be the duty of the secretary of state, at the same time that he is required by law to certify the assessment of rolling stock of railroad corporations, to certify to the assessor of said respective counties in which said sums are to be taxed the amount to be taxed in each particular county, and that the assessor should then list and assess the same as personal property, designating the same upon his assessment-roll as "capital stock of —."

A copy of the said act of the General Assembly of the State of Arkansas is hereto attached and made a part hereof and marked Exhibit "A."

(8.) That, pursuant to the said act and within the time therein required, your orator made and filed with the board of railroad commissioners of said State its statement, setting forth the facts required by said statute so far as it was within your orator's power to comply therewith; but your orator was not able to state the market value of the shares of its stock for the reason that said shares had no market value, none of them having ever been sold or offered for sale, and, in view of your orator's inability to state the market value of such shares and because such shares had no market value in fact and for the information of said board of railroad commissioners, your orator stated in its said report:

"The board of railroad commissioners is respectfully advised that the actual value of all of the property and assets of this company wherever situated or used does not exceed the sum of seven hundred and fifty thousand ($750,000) dollars, and the actual value of
all of the property and assets of this company owned and sit-
9 uated or in any manner used or employed within the State
of Arkansas does not exceed the sum of seven thousand ninety-five and $\frac{62}{100}$ dollars. This company therefore protests against any assessment for taxation under the act aforesaid in excess of the actual value of its property owned, situated, or used within the State of Arkansas and so subject to the jurisdiction of said State or in excess of the ratio of actual value upon which other similar property is assessed for taxation within the State of Arkansas."

And your orator avers that the statement contained in such report of the value of your orator's property situated within the State of Arkansas, and also the statement of the value of your orator's property wherever situated, was and is true in point of fact, and that the said board of railroad commissioners of Arkansas had no reason to believe that the same was untrue in any particular. A copy of the report so made by your orator is hereto attached and made part hereof and marked Exhibit "B."

(9.) That after the said report was made and filed by your orator the board of railroad commissioners of the State of Arkansas, composed of William M. Fishback, governor of said State; Henry B. Armistead, secretary of state, and Charles B. Mills, auditor of state, claiming to proceed under and by virtue of the authority of the act of the General Assembly hereinbefore referred to, assessed your ora-

tor's property for taxation within the State of Arkansas at the sum of one hundred and thirty-six ($136) dollars per mile for each mile of railway over or upon which your orator carries on its business within said State, the same being 1,576.7 miles, as found by said
board, making an aggregate assessment of your orator's prop-
10 erty for the State of Arkansas equal to two hundred and
fourteen thousand four hundred and thirty-one ($214,431) dol-
lars; but the said board of railroad commissioners did not, as your orator is advised and believes and now avers, find and determine the value of your orator's capital stock, as required by said act. A copy of the said assessment, so far as the same relates to the property of your orator, is as follows, to wit:

"TUESDAY MORNING, *August 29th*, 1893.

"The board met pursuant to adjournment.

"Present: C. B. Mills, auditor, and H. B. Armistead, sec'y of state.

"Upon motion, the renditions of the express, telegraph, and sleeping car companies were taken up, and after a thorough investigation and discussion of their capital stock, their financial condition, etc., the board assessed them respectively as follows:

"Pacific Express Company, $136.00 per mile."

But your orator has no knowledge nor any means of knowledge, save by the discovery of the said defendants, members of said board, of the methods or means by which the said board fixed the said amount, nor the property the said board took into consideration in determining the same, though your orator avers that, applying the said assessment or valuation to the whole mileage upon which your orator has its business carried, the product would be equal to nearly four times the value of all the property owned by your orator, wherever situated.

(10.) And your orator further avers that the said board of railroad commissioners, claiming to proceed under and by virtue of the act of assembly aforesaid, proceeded to ascertain the amount at which
your orator's property should be assessed for taxation in each
11 county of the State in which your orator carries on its busi-
ness by multiplying the valuation per mile, fixed as aforesaid, by the number of miles or fractions of a mile of line of railroad situated within the respective counties, as found by said board, and over or upon which your orator carries on its business as aforesaid, and then fixed the product as the sum at which your orator's said property should be assessed in said counties respectively.

(11.) That your orator's property owned or used in said State consists of personal property located in different counties and towns where your orator carries on its business, such as horses, wagons, safes, office furniture, packing trunks, trucks, stationery, and like articles, a schedule of which, showing the counties and towns in which the same is situated and the actual cost of the same, is hereto attached and made part hereof and marked "C;" but your orator avers that much of the said property had been in use many years, and was not at the time aforesaid worth the cost of the same nor more than forty per cent. of such cost.

(12.) That the assessment so made by the board of railroad commissioners of the sum to be taxed in the respective counties bears no relation whatever to the value of the property belonging to your orator and situated and used in said counties; that the assessment so made by the said board of railroad commissioners and the actual cost of your orator's property situated in the respective counties was as follows, to wit:

County.	Assessment.	Actual cost.
Arkansas	$2,414 00	$95 00
Ashley	3,872 00	105 00
Bradley	730 00	82 50
12 Calhoun	1,391 00	45 00
Chicot	2,152 00	38 00
Clark	5,473 00	401 50
Clay	5,456 00	660 50
Cleveland	2,906 00	187 50
Columbia	4,008 00	276 00
Conway	3,010 00	2 50
Craighead	6,665 00	64 00
Crawford	3,040 00	
Crittenden	6,312 00	
Cross	9,384 00	451 50
Dallas	787 00	47 50
Desha	5,804 00	135 25
Drew	5,522 00	
Faulkner	2,706 00	5 00
Franklin	3,317 00	136 50
Greene	7,725 00	130 00
Hempstead	2,985 00	824 95
Hot Spring	3,584 00	210 50
Independence	4,764 00	763 00
Jackson	5,662 00	1,662 85
Jefferson	12,515 00	1,861 75
Johnson	4,290 00	5 00
La Fayette	5,056 00	146 00
Lawrence	3,128 00	269 00
Lee	2,611 00	213 00
Lincoln	1,836 00	137 50
Lonoke	6,962 00	682 50
Miller	5,406 00	1,834 00
Monroe	6,461 00	1,066 00
13 Nevada	1,870 00	204 00
Ouachita	1,145 00	268 00
Phillips	2,236 00	830 00
Poinsett	5,099 00	185 00

County.	Assessment.	Actual cost.
Pope	$3,074 00	$5 00
Prairie	3,293 00	157 50
Pulaski	10,941 00	2,045 00
Randolph	340 00	137 50
Saline	3,675 00	235 00
Sebastian	2,919 00	1,331 50
St. Francis	8,194 00	236 75
Union	2,282 00	
White	6,539 00	1,123 50
Woodruff	4,993 00	321 50
Total	$214,443 00	$19,489 05

(13.) That the aggregate of all of the assessments made by said board of railroad commissioners for the several counties within the State of Arkansas wherein your orator does business bears no relation whatever to the value of your orator's property situated and used within said State and is many times greater than the value of all of the property of every description owned by your orator and situated or used within the said State, and that in fixing the sum to be taxed in the several counties as aforesaid the said board of railroad commissioners intentionally included the value of property (including real estate) owned by your orator which was neither situated nor used
within the State of Arkansas nor in any manner subject to
14 the jurisdiction of said State, for taxation or otherwise; but
the said board claimed to proceed by the authority of the
said act of assembly.

(14.) Your orator avers that the value of its property of every kind and description situated within the State of Arkansas did not bear the same proportion or nearly the same proportion to its property in any other State that the whole number of miles of railway within the State of Arkansas over which your orator carried on its business as aforesaid bore to the whole number of miles of railway within such other State over which your orator carried on its business in such other State, nor did your orator's property aforesaid within the State of Arkansas bear the same or nearly the same proportion to all of the property owned by it and represented by or constituting its capital stock as the number of miles of railroad within the State of Arkansas over which your orator carries on its said business as aforesaid bears to the whole number of miles of railroad, wherever situated, over which your orator carries on its business; that in many of the States in which your orator carries on its business as aforesaid the value of its property situated in such States is much greater per mile of railroad over which your orator carries on its said business in such States than the value of its property situated in the State of Arkansas per mile of rail-

road within said State over which it carries on its business, and the ratio of value of all of the property owned by your orator, of every description, situated within the State of Arkansas to the value of the whole of your orator's property is much less than that which the number of miles of railroad within the State of Arkansas over which your orator carries on its business as aforesaid bears to
15 the whole number of miles of railroad over which your orator carries on its business; that the value of the whole of your orator's property within the State of Arkansas is, approximately, equal to no more than one one-hundredth part of the value of the whole of the property owned by your orator and representing its capital stock, while the number of miles of railway over which your orator carries on its said business within the State of Arkansas as aforesaid is equal to more than eight one-hundredths of the whole number of miles over which such business is carried on; that the value of the whole of your orator's property situated within the State of Arkansas, of every kind and description, did not exceed the sum of seven thousand seven hundred ninety-five and $\frac{67}{100}$ dollars.

(15.) Your orator further shows that by the laws of the State of Arkansas the property of all persons (except express companies) situated within the State and of the same character as the property owned by your orator and situated therein, as hereinbefore alleged, is required to be assessed for purposes of taxation by local or county assessors in each county wherein the property subject to taxation may be situated, and by the constitution of the State of Arkansas all laws are required to be uniform in their operation, all property subject to taxation is required to be taxed according to its value, the value is required to be ascertained by an equal and uniform method throughout the State, and no species of property is permitted to be taxed higher than any other species of equal value.

(16.) That the act of the General Assembly of the State of Arkansas hereinbefore referred to, and of which a copy is hereto attached and marked "A," is a void and unconstitutional act and the assess-
16 ment of your orator's property by the said board of railroad commissioners pursuant thereto is a void and unconstitutional assessment, because (1) the said act provides for the assessment of, and the said assessment embraces, property not situated within the jurisdiction of the State of Arkansas; and (2) the said act provides for the assessment and taxation of, and the said assessment embraces, interstate commerce, in violation of the provisions of the Constitution of the United States whereby the Congress of the United States is given exclusive power to regulate commerce between the several States of the United States; and (3) the said act provides for the denial, and the said assessment does deny, to your orator the equal protection of the laws of said State, in violation of the amendment to the Constitution of the United States whereby each State is prohibited to deny to any person within its jurisdiction the equal protection of its laws; and (4) the said act provides for an assessment of property for taxation and the taxation thereof, and the said assessment so made by the said board of railroad commissioners assesses your orator's property for taxation without regard to its

value and in excess of its value; and (5) the said act provides for the assessment of property for taxation in a manner and by a method and by persons and officers different from the manner and method and by different persons and officers provided and required by the laws of the State of Arkansas in respect to the same kinds of property owned by other persons within said State, and of which the same use is made and under the same circumstances and conditions, in violation of the constitution of the State of Arkansas and in violation of the amendment to the Constitution of the United States which prohibits any State to deny to any person within its jurisdiction the equal protection of its laws.

17 (17.) That, pursuant to the action of the board of railroad commissioners hereinbefore set forth and pursuant to the aforesaid act of the General Assembly of said State, the defendant Henry B. Armistead, who is also secretary of state for said State of Arkansas, has certified the said several assessments to the county assessors for the several counties in said State, as hereinbefore set forth, who have listed the same as personal property owned by your orator and subject to taxation for the year — in said several counties, and have returned the said assessments to the county clerks of said counties, defendants herein.

(18.) That by the law of the State of Arkansas it is the duty of the several county clerks aforesaid to make out the tax books for their respective counties and to enter the said several assessments thereon, and to levy the taxes thereon at the rate fixed for State, county, and all other purposes, and extend the same upon said tax books and deliver the same to the tax-collector, together with a warrant authorizing and requiring the collection of the same.

(19.) That by the law of said State the taxes as assessed and levied will become and be apparent liens upon your petitioner's property and constitute a cloud thereon, and your orator will, unless relief be granted herein, be subjected to and harassed by a multiplicity of suits in order to remove such clouds upon its title.

(20.) That, notwithstanding the facts herein set out, the said defendants claim and give out that the said act of the General Assembly is a valid law and the said assessment valid and binding upon your
orator, and unless restrained by the orders and process of
18 this court the said several county clerks, defendants herein,
will proceed to enter the said assessments upon the tax books in their respective counties, and will proceed to levy the taxes thereon for State, county, and all other purposes at the rates fixed therefor, and extend the same upon the said tax books as taxes due and to be collected from your orator, and will deliver same to the tax-collector for their respective counties, with a warrant for the collection of the same, to the great and irreparable loss and injury of your orator and for which there is no adequate remedy at law.

And because your orator can only obtain adequate relief in this court and to the end that the defendants may, if they can, show why your orator should not have the relief herein prayed and may make full disclosure and discovery of all the matters aforesaid, and, according to the best and utmost of their knowledge, information,

and belief, make full, true, and perfect answers to the averments of this bill of complaint, and especially that the said defendants, William M. Fishback, Henry B. Armistead, and Charles B. Mills, be required to show whether or not they, as the board of railroad commissioners of the State of Arkansas, found and fixed the value of the entire capital stock of your orator, and if they did, then show what value they found and, specifically, what property they took into consideration as constituting said capital stock and where the same was situated and the method and means by which they ascertained and fixed the value of the same, but not under oath, an answer under oath being hereby expressly waived, your orator prays that the act of the General Assembly of the State of Arkansas entitled "An act to assess and collect taxes from certain corporations," hereinbefore referred to, may be decreed to be
19 unconstitutional and void, and the acts of the said board of railroad commissioners assessing your orator's property for taxation as aforesaid may be decreed to be cancelled and of no effect, and that each and all of the said defendants and all persons acting under them may be perpetually restrained. Your orator further prays that a writ of injunction may be issued out of and under the seal of this court, commanding and perpetually enjoining and restraining the said defendants and all persons acting under them from in any manner proceeding, pursuant to the said act of the General Assembly of the State of Arkansas or pursuant to the said assessment of the said board of railroad commissioners, to execute the said act or the said assessment made as aforesaid; and that each of the said defendants, county clerks, as hereinbefore alleged, may be specifically restrained and enjoined from entering the said several assessments upon the tax books of their respective offices and from levying any tax thereon or extending the same upon the tax books of their respective counties, and from issuing any warrant for the collection of the same.

And your orator further prays that a provisional injunction or restraining order be issued, restraining the said defendants, each and all of them, as aforesaid, during the pendency of this cause and until final decree herein, and for such other and further relief as in equity and good conscience your orator may be entitled to.

May it please your honors to grant unto your orator not only the writs of injunction hereinbefore prayed for, but also a writ of subpœna of the United States of America, directed to the said William M. Fishback, Henry B. Armistead, and Charles B. Mills, constituting the board of railroad commissioners for the State of Arkansas;
20 J. W. Allen, county clerk of the county of Arkansas, in said State; R. R. Bradford, county clerk for the county of Ashley, in said State; B. E. Langston, county clerk of the county of Bradley, in said State; T. N. Means, county clerk for the county of Calhoun, in said State; Charles L. Mead, county clerk of the county of Chicot, in said State; A. W. Wilson, county clerk of the county of Clark, in said State; B. B. Biffle, county clerk of the county of Clay, in said State; Woodson Mosely, county clerk of the county of Cleveland, in said State; D. R. Smith, county clerk of the county of Columbia, in said

State; J. C. Massey, county clerk of the county of Conway, in said State; C. M. Anderson, county clerk of the county of Craighead, in said State; P. D. Scott, county clerk of the county of Crawford, in said State; Samuel Keel, county clerk of the county of Crittenden, in said State; J. M. Levesque, county clerk of the county of Cross, in said State; N. A. Clark, county clerk of the county of Dallas, in said State; M. W. Quilling, county clerk of the county of Desha, in said State; R. L. Hardy, county clerk of the county of Drew, in said State; E. M. Morgan, county clerk of the county of Faulkner, in said State; T. C. Moore, county clerk of the county of Franklin, in said State; J. R. Miller, county clerk of the county of Greene, in said State; J. Ford Johnson, county clerk of the county of Hempstead, in said State; W. W. Dutton, county clerk of the county of Hot Spring, in said State; W. R. Bevens, county clerk of the county of Independence, in said State; George A. Lockard, county clerk of the county of Jackson, in said State; G. E. Greenfield, county clerk of the county of Jefferson, in said State; H. L. Bunch, county clerk of the county of Johnson, in said State; B. P. Wheat, county clerk of the county of La Fayette, in said State; J. H. Sloan, county clerk
of the county of Lawrence, in said State; W. W. Foreman.
21 county clerk of the county of Lee, in said State; H. D. Avery,
county clerk of the county of Lincoln, in said State; W,
H. Loman, county clerk of the county of Lonoke, in said State; J. V. Scott, county clerk of the county of Miller, in said State; J. A. Garrett, county clerk of the county of Monroe, in said State; Alex. Vaughan, county clerk of the county of Nevada, in said State; W. P. Cawthon, county clerk of the county of Ouachita, in said State; J. C. Rembert, county clerk of the county of Phillips, in said State; A. A. Coppage, county clerk of the county of Poinsett, in said State; George E. Howard, county clerk of the county of Pope, in said State; Emmet Vaughan, county clerk of the county of Prairie, in said State; John Brodie, county clerk of the county of Pulaski, in said State; Joseph T. Robinson, county clerk of the county of Randolph, in said State; W. H. Evans, county clerk of the county of Saline, in said State; C. H. Howe, county clerk of the county of Sebastian, in said State; F. Laughinghouse, county clerk of the county of St. Francis, in said State; C. W. Hearin, county clerk of the county of Union, in said State; C. S. George, county clerk of the county of White, in said State, and Ed. Roddy, county clerk of the county of Woodruff, in said State, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide by and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

WESTEL W. MORSMAN AND
J. M. MOORE,
Solicitors for Complainant and of Counsel.

22 UNITED STATES OF AMERICA,
State of Nebraska, Douglas County, } *ss:*

I, Edgar M. Morsman, on my oath do say that I am president of the Pacific Express Company; that I have read the foregoing bill of complaint and am familiar with its contents, and that the allegations of the same are true of my own knowledge except as to the matters therein stated on information and belief, and that as to those matters I believe the same to be true.

EDGAR M. MORSMAN.

Subscribed and sworn to before me this 23rd day of October, A. D. 1893.

T. K. SUDBOROUGH,
Notary Public.

EXHIBIT "A."

Act CXXXVI.

An act to assess and collect taxes from certain corporations.

SECTION 1. All sleeping or dining car, telegraph and express companies to furnish board of railroad commissioners' statements:

First. Copy of articles of incorporation.

Second. Amount of capital stock, describing same.

Third. Total number of miles on which operated within or without the State.

Fourth. Number of miles in State operated. Statement to be verified. Board may obtain other information.

2. Manner of obtaining taxable value.

23 3. Valuation to be apportioned to the counties. Secretary of state to certify same.

4. Attorney general to bring suit to enforce back taxes.

5. Repeals all laws in conflict and act in force from passage.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. That it shall be, and it is hereby made the duty of every sleeping or dining car company, express company, or tel-graph company, incorporated by the laws of this or any other State, and carrying on business in this State, on the first Monday in July, 1893, and every second year thereafter, to make out and file with the board of railroad commissioners of this State a statement showing in detail the following:

First. A certified copy of the articles of incorporation under which the said company is organized and carrying on business, said copy is to be filed but once unless the board shall otherwise direct.

Second. The amount of capital stock subscribed, whether designated as common or preferred stock or by any other name or description, showing the par value of each share, and the market value thereof at the time the said certificate is required to be made.

Third. The total number of miles of railway, within or without this State which such sleeping or dining car company runs its cars, or express company carries on its business; and the number of miles of line within and without this State which any such telegraph company employs in the transaction of its business.

Fourth. The number of miles of railway in this State over
24 which any such sleeping or dining car company — be running its cars, and over which any such express company may be carrying on its business; and the number of miles of line which any such telegraph company may employ in this State in the transaction of its business.

The statements contained in any such certificate shall be sworn to by a general officer of such corporation whose service therein makes it his duty to be personally informed about the matters to be included in such certificate. False swearing in making any of the statements required to be set forth in said certificate is hereby declared to be perjury, and shall be punished as such. If the board of railroad commissioners shall have reason to believe that any statement contained in any such certificate filed with them is false in any material matter it is hereby made their duty to procure other information about the matters to be contained in such certificate. The said board shall also have power and it is hereby made their duty to resort to other sources of information in the event any such corporation shall fail or refuse to file the certificate aforesaid.

SEC. 2. When such certificate shall have been filed with said board, or such other information obtained, the said board shall proceed to ascertain the value of the entire capital stock, or of each and every one of the corporations aforesaid, and shall thereupon fix the sum at which the property of any such corporation shall be assessed in this State for purposes of taxation, by taking the same proportion in the aggregate value of the capital stock of any such corporation as the number of miles of railway in this State over which such sleeping or dining car company, or express company, carries
25 on its business, or as the number of miles of line employed in this State by any such telegraph company in the transaction of its business bears to the aggregate number of miles of railway within as well as without this State over which such sleeping or dining car company or express company carries on its business; or in the case of any such telegraph company, the number of miles of line employed in this State bears to the entire number of miles employed by it within as well as without this State.

SEC. 3. After the said board shall have ascertained the aggregate amount to be assessed against the property of any such corporation, the said board shall further ascertain the parts of such aggregate valuation to be apportioned to the several counties in which such property is subject to taxation, which shall be done by dividing the aggregate amount fixed as said taxable value in this State by the entire number of miles of railway or telegraph lines over which such corporations carry on its business in the entire State, and the result shall be the value per mile of such capital stock for the purpose of taxation; and the value per mile of such capital stock, ascertained as aforesaid, shall be multiplied by the number of miles of railway or telegraph lines lying and being situated in any county, and the product thereof is the sum to be taxed in such county; and it shall be the duty of the secretary of state, at the same time that he is required to certify the assessment of rolling stock of railroad corporations to certify to the assessor of said respective counties in which said sums are to be taxed, the amount to be taxed in each particular county, and said assessor shall list and assess the same as personal property, designating the same as "capital stock of —."

26 Before the county clerk shall allow the assessor any compensation for his services it must appear that this entry has been properly made upon the proper assessment books.

SEC. 4. If it shall appear that any telegraph, express or sleeping or dining car company has been doing business in this State before the passage of this act under such circumstances as to render its property liable to taxation under the constitution and laws of the State, and that from any cause it has not been assessed for taxation, then and in that event it is hereby made the duty of the attorney general to forthwith institute a suit or suits in equity for the purpose of having such omitted taxes assessed and collected for the year or years for which the property of said corporation so escaped taxation, and any assessment made in the progress of any suit shall be made in the manner and by the board designated in this act to whom the same shall be referred by proper order of the court before which any such suit may be pending, and such assessment when so made shall be by said board certified to said court and shall be made the basis of its decree, if liability shall otherwise be found to exist. Said proceedings shall be conducted so far as the same may be applicable under the provisions of the act approved March 1st, 1887, being "An act to provide for the collection of overdue taxes from corporations doing business in this State."

SEC. 5. That all acts or parts of acts in conflict with this act, be and the same are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved April 8, 1893.

27

EXHIBIT "B."

Report of the Pacific Express Company.

To the board of railroad commissioners for the State of Arkansas.

GENTLEMEN: The Pacific Express Company, a corporation organized under the laws of the State of Nebraska, and engaged in carrying goods by express within the State of Arkansas and other States, complying with the act of the legislature of the State of Arkansas, makes the following report:

(1.) A duly certified copy of the articles of incorporation of this company is hereto attached and made part of this report.

(2.) The amount of the capital stock of the company is six million dollars ($6,000,000.00), none of which is designated as either common or preferred stock.

(3.) The capital stock of this company is divided into shares of one hundred (100) dollars each, which is the par value thereof; said shares have no market value, none having ever been sold. The shares of this company were issued to and are held by railroad companies in consideration of contracts for transportation in the course of this company's business. Said shares are held by the Union Pacific Railway Company, Missouri Pacific Railway Company, and the Wabash Railroad Company.

(4.) The total number of miles of railway operated by this company in the course of its business is 20,206 miles, and the total number of miles so operated by this company within the State of Arkansas is 1,740 miles.

28 (5.) This company is advised that the act of the legislature of the State of Arkansas pursuant to which this report is made is an unconstitutional act, but it does not rely upon such invalidity to escape any fair or reasonable assessment for purposes of taxation. The board of railroad commissioners is respectfully advised that the actual value of all of the property and assets of this company, wherever situated or used, does not exceed the sum of seven hundred and fifty thousand ($750,000.00) dollars, and the actual value of all of the property and assets of this company owned, situated, or in any manner used or employed within the State of Arkansas does not exceed the sum of seventy-seven hundred ninety-five and $\frac{62}{100}$ dollars. This company therefore protests against any assessment for taxation under the act aforesaid in excess of the actual value of its property owned, situated, or used within the State of Arkansas, and so subject to the jurisdiction of said State, in excess of the actual value of the same or in excess of the ratio of actual value upon which other similar property is assessed for taxation within the State of Arkansas.

(S-gned) E. M. MORSMAN, *President.*

STATE OF NEBRASKA, } *ss:*
Douglas County, }

I, E. M. Morsman, on my oath do say that I am president and a general officer of such company, whose service in the business of such company makes it my duty to be personally informed of the matters and things set forth in the foregoing report, and that I am acquainted with the facts stated therein, and that the facts so stated are true to the best of my knowledge and belief, so help me God.

(Signed) E. M. MORSMAN.

29 Subscribed and sworn to by E. M. Morsman, before me, this thirtieth day of June, A. D. 1893.

(Signed) T. K. SUDBOROUGH,
Notary Public. [SEAL.]

EXHIBIT "C."

Ashley county.

Morrill:		
1 safe	$50 00	
1 sta. case	2 50	
		$52 50
Wilmot:		
1 safe	50 00	
1 sta. case	2 50	
		52 50
		$105 00

Arkansas county.

Goldman:		
1 safe	$45 00	
1 sta. case	2 50	
		$47 50
Stuttgart:		
1 safe	45 00	
1 sta. case	2 50	
		47 50
		$95 00

Bradley county.

Warren:		
1 safe	80 00	
1 sta. case	2 50	
		$82 50

Calhoun county.

Thornton:		
30 1 safe	45 00	45 00

Chicot county.

Dermott:		
1 Howard truck	29 00	
1 sta. case	2 50	
1 tarpaulin and pouch	6 60	
		38 00

Clark county.

Arkadelphia:		
1 safe	$135 00	
1 barrow	15 00	
		$150 00
Gurdan:		
1 safe	135 00	
1 sta. case	2 50	
1 barrow	19 00	
		156 50

Smithton:		
1 safe	95 00	95 00
		$401 50

Clay county.

Corning:		
1 safe	$135 00	
1 sta. case	2 50	$137 50
Greenway:		
1 safe	$95 00	
1 sta. case	2 50	97 50
Knabel:		
1 safe	$135 00	
1 sta. case	2 50	
2 Howard trucks	58 00	
1 pauline	5 00	$200 50
31 Peach orchard:		
1 sta. case	2 50	2 50
Piggott:		
1 safe	25 00	
1 sta. case	2 50	27 50
Rector:		
1 safe	95 00	
1 sta. case	2 50	97 50
St. Francis:		
1 safe	95 00	
1 sta. case	2 50	97 50
		$660 50

Cleveland county.

Kedron:		
1 sta. case	2 50	2 50
Kingsland:		
1 safe	135 00	
1 sta. case	2 50	137 50
Reson:		
1 safe	45 00	
1 sta. case	2 50	47 50
		$187 50

Columbia county.

Buckner:		
1 safe	45 00	
1 sta. case	2 50	
		47 50
Magnolia:		
1 safe	75 00	
1 sta. case	2 50	
1 O. H. room	6 00	
		83 50
McNeil:		
1 safe	45 00	
32 1 sta. case	2 50	
		47 50
Waldo:		
1 safe	95 00	
1 sta. case	2 50	
		97 50
		$276 00

Conway county.

Plummerville:		
1 sta. case	2 50	2 50

Craighead county.

Gilkeson:		
1 sta. case	2 50	2 50
Nettleton:		
1 safe	40 00	
1 sta. case	2 50	
1 barrow	19 00	
		61 50
		$64 00

Cross county.

Cherry Valley:		
1 safe	95 00	
1 sta. case	2 50	
		97 50
Fair Oaks:		
1 safe	116 00	
1 truck	19 00	
1 sta. case	2 50	
		137 50
Vanndale:		
1 safe	40 00	
1 sta. case	2 50	
		42 50

Wynne:		
1 safe	135 00	
1 barrow	19 00	
1 Howard truck	20 00	
		174 00
33		$451 50
Dallas county.		
Fordyce:		
1 safe	45 00	
1 sta. case	2 50	
		47 50
Desha county.		
Arkansas City:		
1 safe		
1 scale	16 50	
1 seal press	2 00	
1 W. B. press	12 75	
2 Howard trucks	60 00	
Office furniture	25 00	
		116 25
Trippe junction:		
1 barrow	19 00	19 00
		$135 25
Faulkner county.		
Conway:		
1 sta. case	2 50	2 50
Palarm:		
1 sta. case	2 50	2 50
		$5 00
Franklin county.		
Altus:		
1 safe	134 00	
1 sta. case	2 50	
		136 50
Greene county.		
Gainesville:		
1 sta. case	2 50	2 50
Paragould:		
34 1 safe	45 00	
1 cart	20 00	
1 counter scale	2 00	
1 sta. case, 9	2 50	
2 Howard trucks	58 00	
		127 50
		$130 00

Hempstead county.

Fulton:		
1 safe	$136 00	
1 stove & pipe	12 00	
1 hand-cart	20 00	
1 Howard truck	29 00	
		$196 00
Hope:		
1 office building	383 45	
1 safe	135 00	
1 W. B. press	12 50	
1 scale	24 00	
1 C. barrow	19 00	
1 hand-cart	20 00	
Office furniture	35 00	
		628 95
		$824 95

Hot Spring county.

Donaldson:		
1 sta. case	2 50	2 50
Malvern:		
1 safe	135 00	
1 W. B. press	12 50	
2 Howard trucks	58 00	
1 sta. case	2 50	
		208 00
		$210 50

Independence county.

35 Batesville:		
1 safe	135 00	
1 W. B. press	12 50	
1 counter scale	7 50	
1 sta. case	2 50	
1 wagon, single	200 00	
1 harness, old	20 00	
1 horse	150 00	
1 scale	16 50	
Office furniture	40 00	
		$584 00
Newark:		
1 safe	95 00	
1 sta. case	2 50	
1 barrow	19 00	
		116 50

Sulphur Rock:		
1 safe	60 00	
1 sta. case	2 50	
		62 50
		$763 00

Jackson county.

Auvergne:		
1 safe	45 00	
1 sta. case	2 50	
		47 50
Jacksonport:		
1 safe	95 00	95 00
Newport:		
1 oil can	25	
1 office building and fixtures	600 00	
1 safe, # 44612	135 00	
# 335,650, 1 platform scale	16 50	
1 W. B. press & stand	12 50	
36 2 sta. cases	5 00	
1 office chair	2 00	
1 office stool	1 25	
1 water bucket	25	
1 sealing lamp	10	
4 office lamps	2 00	
1 seal, 1 trunk	3 25	
1 marking pot, paste pot, 2 brushes	50	
1 cot, bed, & bedding	5 00	
2 tarpaulins	5 00	
1 packing chest, # 23	10 00	
1 Howard turck, # 179	29 00	
1 do. do. # 233	29 00	
1 do. do. # 362	29 00	
1 curved truck	19 00	
1 single wagon	200 00	
1 single harness	30 00	
1 horse	175 00	
3 lanterns	1 50	
2 canvass bags	40 00	
1 haversack	1 75	
		$1,352 85
Olyphant:		
1 sta. case	2 50	2 50
Swifton:		
1 safe	80 00	
1 sta. case	2 50	
		82 50

Tuckerman:

1 safe	80 00	
1 sta. case	2 50	
		82 50
		$1,662 85

37 Jefferson county.

Altheimer:

1 safe	$45 00	
1 sta. case	2 50	
		47 50

Noble Lake:

1 safe	95 00	95 00

Pine Bluff:

1 bay horse, Dock	150 00	
1 bay horse, Dick	150 00	
1 bay horse, Ruber	150 00	
1 double wagon, # 141	350 00	
1 single wagon, # 236	200 00	
1 set double harness	55 00	
1 set double harness	35 00	
1 safe, # 83122	119 00	
1 safe, # 64615	45 00	
1 mess. safe, # 55	15 00	
Furniture & fixtures	60 00	
1 counter scale	2 00	
1 platform scale	20 00	
1 floor truck	4 00	
1 baggage truck	15 00	
1 packer	10 00	
1 copying press	12 50	
1 wringer	1 75	
1 stove	16 00	
1 broom	25	
1 sprinkler	25	
1 seal press	1 50	
1 seal (impression)	50	
38 1 revolver	9 00	
1 clock	5 00	
1 cot, bed, blankets	5 00	
1 combined filter and cooler	5 00	
		$1,436 75

Redfield:

1 sta. case	2 50	
A safe	95 00	
		97 50

Sherrill:

1 safe	135 00	
1 sta. case	2 50	
		137 50

Wabbaseka:

A safe	45 00	
1 sta. case	2 50	
		47 50
		$1,861 75

Lincoln county.

Varner:

1 safe	136 00	
1 sta. case	2 50	
		137 50

Lonoke county.

Austin:

1 safe	135 00	
1 copy press	12 00	
1 barrow	15 00	
1 sta. case	2 00	
		164 00

Cabot:

1 safe	80 00	
1 W. B. press	12 50	
1 Howard truck	29 00	
1 sta. case	2 50	
		124 00

Carlisle:

39 1 safe	135 00	
1 sta. case	2 50	
1 barrow	19 00	
		156 50

England:

1 safe	45 00	
1 sta. case	2 50	
		47 50

Lonoke:

1 safe	135 00	
1 sta. case	2 50	
1 barrow	19 00	
		156 50

Ward:

1 barrow	19 00	
1 W. B. press	12 50	
1 sta. case	2 50	
		34 00

Miller county.

Garland City:

1 safe	45 00	
1 sta. case	2 50	
		47 50

Texarkana:		
1 safe	160 00	
1 safe	135 00	
2 platform scales	34 00	
1 counter scales	7 50	
2 W. B. presses	25 00	
1 desk	35 00	
3 wire cots	15 00	
1 clock	5 00	
1 single wagon	200 00	
1 double do.	300 00	
3 horses	450 00	
3 harness	125 00	
40 7 Howard trucks	203 00	
Office fixtures	75 00	
1 W. H. truck	5 00	
3 paulins	12 00	
		$1,786 50
		$1,834 00

Monroe county.

Brinkley:		
1 safe	135 00	
1 W. B. press	12 50	
1 scale	16 50	
1 hand rail	20 00	
3 Howard trucks	87 00	
Office furniture	35 00	
1 building	750 00	
		1,056 00
Clarendon:		
1 stationery case	2 50	2 50
Holy Grove:		
1 stationery case	2 50	2 50
Midway:		
1 stationery case	2 50	2 50
Roe:		
1 stationery case	2 50	2 50
		$1,066 00

Nevada county.

Boughton:		
1 safe	50 00	50 00
Prescott:		
1 safe	135 00	
1 barrow	19 00	
		154 00
		$204 00

41 Ouachita county.

Camden:		
1 safe	135 00	
1 scale	16 50	
1 table	6 50	
1 W. B. press	12 50	
		170 50
Stephens:		
1 safe	95 00	
1 sta. case	2 50	
		97 50
		268 00

Phillips county.

Helena:		
1 safe	144 00	
1 W. B. press	12 50	
1 scale	16 50	
1 W. H. truck	4 50	
1 wagon	300 00	
2 horses	250 00	
Office fixtures	50 00	
		777 50
Latour:		
1 sta. case	2 50	2 50
Marvell:		
1 safe	50 00	50 00
		$830 00

Poinsett county.

Fisher:		
1 safe	45 00	
1 sta. case	2 50	
		47 00
Harrisburg:		
1 safe	135 00	
42 1 sta. case	2 50	
		137 50
		185 00

Pope county.

London:		
1 sta. case	2 50	2 50
Russellville:		
1 sta. case	2 50	2 50
		$5 00

Prairie county.

Devall's Bluff:

1 safe	135 00	
1 sta. case	2 50	
1 cart	20 00	
		157 50

Pulaski county.

Alexander:

1 C. barrow	15 00	15 00

Argenta:

1 sta. case	2 00	2 00

Ft. Smith Crossing:

1 Howard truck	29 00	
1 grip	2 00	
		31 00

Jacksonville:

1 sta. case	2 50	2 50

Little Rock:

8 horses	1,200 00	
2 large double wagons	800 00	
1 small do.	300 00	
1 single do.	400 00	
2 sets old double harness	50 00	
1 set new do.	55 00	
43 1 set new single harness	35 00	
1 set old single harness	20 00	
2 counters & rail	100 00	
2 desks	40 00	
1 safe, 48 x 32 x 28	247 50	
1 safe, 36 x 24 x 24	50 00	
2 pfm. & 2 counter scales	50 00	
2 mess. safes	36 00	
1 safe at depot	150 00	
2 paulins	10 00	
6 trucks	234 00	
3 presses	37 50	
1 clock	5 00	
2 stoves & pipe	25 00	

Mabelvale:

1 barrow	19 00	19 00

Randolph county.

O'Kean:

1 safe	135 00	
1 sta. case	2 50	
		$137 50

St. Francis county.

	Forrest City:		
	1 safe	$135 00	
	1 scale	16 50	
	1 cart	20 00	
	1 sta. case	2 50	
	1 paulin	1 75	
			175 75
	Madison:		
44	1 barrow	19 00	
	1 cart	20 00	
			39 00
	Palestine:		
	1 hand cart	2 00	2 00
	Wheatley:		
	1 cart	20 00	20 00
			$236 75

Saline county.

	Benton:		
	1 safe	135 00	
	1 sta. case	2 50	
			137 50
	Hensley:		
	1 safe	95 00	
	1 sta. case	2 50	
			97 50
			235 00

Sebastian county.

	Fort Smith:		
	1 safe	119 00	
	1 safe	95 00	
	1 scale	16 50	
	1 counter scale	2 00	
	1 W. B. press	12 50	
	3 Howard trucks	87 00	
	1 seal press	2 00	
	2 horses	300 00	
	2 wagons	400 00	
	1 harness	60 00	
	Office fixtures	60 00	
			$1,154 00
	Greenwood:		
	1 safe	80 00	
45	1 sta. safe	2 50	
			82 50

Jenny Lind:		
1 safe	95 00	95 00
		$1,331 50

White county.

Bald Knob:		
1 safe	150 00	
1 barrow	19 00	
2 paulins	8 00	
1 sta. case	2 50	
1 Howard truck	30 00	
		$209 50
Beebe:		
1 safe	135 00	
1 scale	16 50	
1 cart	20 00	
		171 50
Bradford:		
1 safe	80 00	
1 sta. case	2 50	
1 barrow	19 00	
		101 50
Garner:		
1 sta. case	2 50	2 50
Judsonia:		
1 safe	135 00	
1 sta. case	2 50	
1 C. barrow	19 00	
1 fruit-house	35 00	
		191 50
Kensett:		
1 safe	135 00	
1 sta. case	2 50	
1 truck	19 00	
46 2 paulins	7 00	
		163 50
Russell:		
1 safe	95 00	
1 sta. case	2 50	
1 barrow	19 00	
		116 50
Searcy:		
1 safe	135 00	
1 W. B. press	12 50	
1 sta. case	2 50	
1 counter scale	2 00	
1 mess. safe	15 00	
		167 00
		$1,123 00

Woodruff county.

Augusta:		
1 safe	95 00	
1 sta. case	2 00	
		97 00
Howell:		
1 safe	45 00	
1 sta. case	2 50	
		47 50
Martin:		
1 safe	45 00	
1 barrow	19 00	
		64 00
McCrory:		
1 safe	95 00	
1 scale	18 00	
		113 00
		$321 50

Filed October 25, 1893.

RALPH L. GOODRICH, *Clerk.*

47 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 23rd day of October, anno Domini one thousand eight hundred and ninety-three, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit, on January 26th, 1894, as follows:

THE PACIFIC EXPRESS COMPANY
v.
WILLIAM M. FISHBACK *et al.*

Comes the complainant, by J. M. Moore, Esqr., its solicitor, and files herein its supplemental bill.

Which supplemental bill is in the words and figures as follows, to wit:

In the Circuit Court of the United States within and for the District of Arkansas.

THE PACIFIC EXPRESS COMPANY
v.
WILLIAM M. FISHBACK *et al.*

Supplemental Bill of Complaint.

To the honorable judges of said court:

Par. 1. Your orator now avers that since the filing of the original bill of complaint in this cause the several defendants named in the original bill as county clerks of the several counties therein 48 named have, pursuant to the assessment of your orator's property by the board of railroad commissioners set forth in the bill, made out the tax books for their said several counties and have entered the said several assessments thereon against your orator and have levied the taxes thereon at the rate fixed for State, county, and all other purposes and have extended the same upon the tax books and delivered the tax books to the several tax-collectors of their respective counties, together with a warrant authorizing and requiring the collection of the said taxes.

Par. 2. That P. M. Black is the tax-collector for the county of Arkansas; that Jno. P. Clark is the tax-collector for the county of Ashley; that J. S. Lee is the tax-collector for the county of Bradley; that R. H. Cone is the tax-collector for the county of Calhoun; that T. P. Johnson is the tax-collector for the county of Chicot; that Jas. H. Abraham is the tax-collector for the county — Clark; that R. L. Hancock is the tax-collector for the county of Clay; that M. M. Smith is the tax-collector for the county of Cleveland; that T. J. Grimmett is the tax-collector for the county of Columbia; that B. G. White is the tax-collector for the county of Conway; that A. C. Broadway is the tax-collector for the county of Craighead; that John Steward is the tax-collector for the county of Crawford; that W. W. Swepton is the tax-collector for the county of Crittenden; that John W. Killough is the tax-collector for the county of Cross; that E. R. Shugot is the tax-collector for the county of Dallas; that H. L. Henry is the tax-collector for the county of Desha; that L. E. Morgan is the tax-collector for the county of Drew; that J. B. Wilson is the tax-collector for the county of Faulkner; that W. P. Richardson is the tax-collector for the county of Franklin; that John R. Thompson is the tax-collector for the county of Greene; that James C. Jones is the 49 tax-collector for the county of Hempstead; that B. C. Fitzhugh is the tax-collector for the county of Hot Spring; that T. J. Owens is the tax-collector for the county of Independence; that James M. Hobgood is the tax-collector for the county of Jackson; that A. G. Thompson is the tax-collector for the county of Jefferson; that J. H. Powers is the tax-collector for the county of Johnson; that Clint Le May is the tax-collector for the county of La Fayette; that Wm. Childers is the tax-collector for the county of Lawrence; that W. T. Derrick is the tax-collector for the county

of Lee; that J. M. Merony is the tax-collector for the county of Lincoln; that James H. Hicks is the tax-collector for the county of Lonoke; that A. S. Blythe is the tax-collector for the county of Miller; that T. T. Bateman is the tax-collector for the county of Monroe; that W. M. Munn is the tax-collector for the county of Nevada; that A. Hamilton is the tax-collector for the county of Ouachita; that Lee Pendergrass is the tax-collector of the county of Phillips; that John B. Gantt is the tax-collector for the county of Poinsett; that W. J. Johnson is the tax-collector for the county of Pope; that A. S. Rheinhardt is the tax-collector for the county of Prairie; that Anderson Mills is the tax-collector for the county of Pulaski; that W. H. Hogan is the tax-collector for the county of Randolph; that J. F. Shoppach is the tax-collector for the county of Saline; that T. W. Bugg is the tax-collector for the county of Sebastian; that W. E. Williams is the tax-collector for the county of St. Francis; that N. C. Norris is the tax-collector for the county of Union; that T. L. Harder is the tax-collector for the county of White; that M. H. Patterson is the tax-collector for the county of Woodruff,
all in the said State of Arkansas, and each of said persons
50 named in this paragraph as tax-collectors is now and was *and*
the time of the commencement of this suit a citizen of the
State of Arkansas.

Par. 3. That unless restrained by the order and process of this court the said several tax-collectors will proceed to collect the said taxes so levied in the said several counties by distraint and sale of the property of your orator for the amount of said several levies, to the great and irreparable loss and injury of your orator and interference with and obstruction of your orator's interstate business, as set forth in the original bill, and will thereby greatly embarrass and prevent your orator from performing its duties to the public as a common carrier, and whereby your orator will be involved in a great multiplicity of suits, and for all of which your orator has no adequate remedy at law.

Par. 4. Your orator further avers that it does not seek to escape any just and legal taxation of its property subject to taxation by the State of Arkansas, but, on the contrary, is now and has always been ready and willing to pay all such taxes; but your orator says it cannot pay or tender payment of taxes upon its property or pay the same into court for the reasons that no assessment of the same has been made and your orator is unable to ascertain or determine the amount of its taxes; and your orator avers that if the court shall be of the opinion that its property may yet be legally assessed for taxation your orator is ready and willing to submit to such assessment and will promptly pay the taxes found due thereby.

Par. 5. To the end, therefore, that your orator may have the same relief, by the provisional and perpetual injunction or otherwise,
against the said several tax-collectors herein named which is
51 prayed in the original bill and which is now prayed for as
fully as if repeated herein, and to the end that said several
tax-collectors may be perpetually enjoined from proceeding in any manner to collect the said taxes or any part of the same by distraint

and sale of your orator's property or otherwise, your orator prays that the said several tax-collectors be made parties defendant to this suit; that the writ of perpetual injunction prayed in the original bill may also perpetually enjoin the said several tax-collectors and all persons acting through or under them or either of them from in any manner proceeding to execute the act of the General Assembly of the State of Arkansas set forth in the original bill or the assessment of your orator's property set forth in the original bill by the board of railroad commissioners, and from in any manner proceeding to collect the said taxes or any part thereof by distraint and sale or otherwise.

Par. 6. And your orator further prays that a provisional injunction or restraining order be entered restraining the said several tax-collectors, each and all of them, during the pendency of this cause and until final decree herein, from proceeding to collect said taxes, and for such other and further relief as in equity and good conscience your orator may be entitled to.

May it please your honors to grant unto your orator not only the writs of injunction, provisional and perpetual, prayed for in the original bill as well as in this supplemental bill, but also a writ of subpœna of the United States of America, directed to the said P. M. Black, tax-collector for the county of Arkansas; Jno. P. Clark, tax-collector for the county of Ashley; J. S. Lee, tax-collector for the county of Bradley; R. H. Cone, tax-collector for the
52 county of Calhoun; T. P. Johnson, tax-collector for the county of Chicot; Jas. H. Abraham, tax-collector for the county of Clark; R. L. Hancock, tax-collector for the county of Clay; M. M. Smith, tax-collector for the county of Cleveland; T. J. Crimmett, tax-collector for the county of Columbia; B. G. White, tax-collector for the county of Conway; A. C. Broadway, tax-collector for the county of Craighead; John Steward, tax-collector for the county of Crawford; W. W. Swepton, tax-collector for the county of Crittenden; John W. Killough, tax-collector for the county of Cross; E. R. Shugot, tax-collector for the county of Dallas; H. L. Henry, tax-collector for the county of Desha; L. E. Morgan, tax-collector for the county of Drew; J. B. Wilson, tax-collector for the county of Faulkner; W. P. Richardson, tax-collector for the county of Franklin; John R. Thompson, tax-collector for the county of Greene; James C. Jones, tax-collector for the county of Hempstead; B. C. Fitzhugh, tax-collector for the county of Hot Spring; T. J. Owens, tax-collector for the county of Independence; James M. Hobgood, tax-collector for the county of Jackson; A. G. Thompson, tax-collector for the county of Jefferson; J. H. Powers, tax-collector for the county of Johnson; Clint. Le May, tax-collector for the county of La Fayette; Wm. Childers, tax-collector of the county of Lawrence; W. T. Derrick, tax-collector for the county of Lee; J. M. Merony, tax-collector for the county of Lincoln; James H. Hicks, tax-collector for the county of Lonoke; A. S. Blythe, tax-collector for the county of Miller; T. T. Bateman, tax-collector for the county of Monroe; W. M. Munn, tax-collector for the county of Nevada; A. Hamilton, tax-collector for the county of Ouachita; Lee Pendergrass,

tax-collector for the county of Phillips; John B. Gantt, tax-collector for the county of Poinsett; W. J. Johnson, tax-collector for the 53 county of Pope; A. S. Rheinhardt, tax-collector for the county of Prairie; Anderson Mills, tax-collector for the county of Pulaski; W. H. Hogan, tax-collector for the county of Randolph; J. F. Shoppach, tax-collector for the county of Saline; T. W. Bugg, tax-collector for the county of Sebastian; W. E. Williams, tax-collector for the county of St. Francis; N. C. Norris, tax-collector for the county of Union; T. L. Harder, tax-collector for the county of White, and M. H. Patterson, tax-collector for the county of Woodruff, commanding them on a certain day to appear and answer unto the original bill and this supplemental bill of complaint and to abide by and perform such order and decree in the premises as to your honors may seem proper and as may be required by the principles of equity and good conscience.

W. W. MORSMAN,
J. M. MOORE,
Solicitors for Complainant and of Counsel.

Filed January 26th, 1894.
RALPH L. GOODRICH, *Clerk.*

And on January 29th, 1894, as follows:

THE PACIFIC EXPRESS COMPANY
v.
W. M. FISHBACK *et al.*

Come the defendants, by James P. Clarke, Esqr., attorney general of the State of Arkansas, and file herein their demurrer to the bill, and comes the plaintiff, by John M. Moore, Esqr., its solicitor, and said demurrer is heard, argued, and submitted to the court, 54 and the court, not now being well and sufficiently advised in the premises, takes time to consider of its judgment herein. Which demurrer is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

The joint and several demurrer of the defendants, W. M. Fishback, H. B. Armistead, and C. B. Mills *et al.*, to the bill of complaint herein of the Pacific Express Company.

These defendants, by protestation, not confessing any of the matters in and by said bill complained of to be true in manner and form as the same are set forth, severally say that they are are advised that there is no matter or thing in said bill good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur accordingly; and for causes of demurrer say that said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants. Wherefore, and for divers other errors in said bill contained and appearing on the face thereof, these defendants do demur thereto, and humbly crave the judgment of this honorable court whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid; and these defendants humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JAMES P. CLARKE,
Attorney General, for Defendants.

55 I hereby certify that in my opinion the above and foregoing demurrer is well founded in point of law.

JAMES P. CLARKE,
Of Counsel for Defendants.

THE STATE OF ARKANSAS,
Pulaski County.

C. B. Mills, being first duly sworn, deposes and says that he is the auditor of state aforesaid and one of the defendants in the above-entitled action; that the above and foregoing demurrer is not interposed for delay; further deponent sayeth not.

C. B. MILLS.

Sworn to and subscribed before me Jan. 24, 1894.

GORDON FRIERSON, *N. P.*

Filed January 29th, 1894.

RALPH L. GOODRICH, *Clerk.*

And on February 20th, 1894, as follows:

THE PACIFIC EXPRESS COMPANY
v.
WM. M. FISHBACK *et al.*

Now, on this day, come the parties to said cause, the complainant, by its solicitors, W. W. Morseman and J. M. Moore, and the defendants, by J. P. Clarke, Esqr., attorney general of the State of Arkansas, and thereupon the defendants filed their demurrer to the original and supplemental bills of complaint in said cause, and by consent of parties said demurrer is argued and submitted, and the court, being well and sufficiently advised in the premises, doth overrule the same; and thereupon the plaintiff, by consent of parties, dismisses its bill of complaint as to the several county clerks 56 mentioned in said original bill of complaint, and the defendants, the said several tax-collectors mentioned in the plaintiff's amended and supplemental bill of complaint, elect to stand on their demurrer and decline to plead further in said cause.

It is accordingly ordered and decreed that the defendants and each and every of them, their agents and deputies, be perpetually restrained and enjoined from taking any steps or proceeding in any manner to enforce the collection of taxes assessed against the property of the Pacific Express Company under the assessment made by defendants Wm. M. Fishback, Henry B. Armistead, and Charles B. Mills, in their capacity as a board of railroad commissioners for the said State of Arkansas, under the provisions of an act of the General Assembly entitled "An act to assess and collect taxes from certain corporations," approved April 8th, 1893.

It is further ordered that the defendants pay all costs incurred in and about this proceeding.

Thereupon the defendants here now in open court file their assignment of errors and petition for appeal to the Supreme Court of the United States, which is granted upon defendants filing an appeal bond herein in the sum of two hundred and fifty dollars, with sureties to be approved by the judge of this court.

And the plaintiff here now waives the issuance and service of citation, and the appellants presented their bond, which is by the judge approved.

Which assignment of errors is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

57 W. M. Fishback *et al.* *v.* Pacific Express Company. } Assignment of Errors.

The appellants herein make the following assignment of errors in the above-entitled cause, namely:

The court erred in overruling the demurrer of the appellants, defendants below, to the complaint of the plaintiffs below and appellee here, and in holding the act of the General Assembly of the State of Arkansas approved April 8, 1893, entitled an "Act to assess and collect taxes from certain corporations," to be void. Wherefore, for the errors above assigned, the appellants pray that the decree rendered in this case be reversed.

JAMES P. CLARKE,
Attorney General, Solicitor for Appellants.

Filed February 20, 1894.

RALPH L. GOODRICH, *Clerk.*

Which petition for appeal is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

Pacific Express Company
v.
W. M. Fishback *et al.*

Now, on this 20th day of February, 1894, come the defendants and pray an appeal in this cause to the Supreme Court of the United

58 States on the ground that the decision herein involves the validity of a statute of the State of Arkansas, and the court actually decided herein that the same is invalid.

JAMES P. CLARKE,
Attorney General, Solicitor for Defendants.

Filed February 20, 1894.

RALPH L GOODRICH, *Clerk.*

Which bond is as follows:

Know all men by these presents that we, the undersigned, are held and firmly bound unto the Pacific Express Company in the full and just sum of two hundred and fifty dollars, to be paid to it or its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, 1894.

Whereas lately, at a term of the circuit court of the United States for the western division of the eastern district of Arkansas, in a suit depending in said court between the Pacific Express Company as complainant and the obligors herein as defendants, except James P. Clarke, who signs this bond as surety, a final decree was rendered against the obligors, except Clarke, and the said obligors have appealed the said cause to the Supreme Court of the United States:

Now, the conditions of the above obligation are such that if the said obligors, except Clarke, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation is to be void; else to remain in full force and effect.

59
W. M. FISHBACK. [SEAL.]
H. B. ARMISTEAD. [SEAL.]
C. B. MILLS. [SEAL.]
R. H. CONE. [SEAL.]
JAMES H. ABRAHAM. [SEAL.]
M. M. SMITH. [SEAL.]
A. C. BROADAWAY. [SEAL.]
JOHN W. KILLOUGH. [SEAL.]
L. E. MORGAN. [SEAL.]
JOHN R. THOMPSON. [SEAL.]
JAMES M. HOBGOOD. [SEAL.]
CLINT LE MAY. [SEAL.]
J. M. MERONY. [SEAL.]
JAMES H. HICKS. [SEAL.]
JOHN A. LOVEWELL. [SEAL.]
W. M. MUNN. [SEAL.]
JOHN B. GANTT. [SEAL.]
A. S. REINHARDT. [SEAL.]
J. F. SHOPPACH. [SEAL.]

by defendants Wm. M. Fishback, Henry B. Armistead, and Charles B. Mills, in their capacity as a board of railroad commissioners for the said State of Arkansas, under the provisions of an act of the General Assembly entitled "An act to assess and collect taxes from certain corporations," approved April 8th, 1893.

It is further ordered that the defendants pay all costs incurred in and about this proceeding.

Thereupon the defendants here now in open court file their assignment of errors and petition for appeal to the Supreme Court of the United States, which is granted upon defendants filing an appeal bond herein in the sum of two hundred and fifty dollars, with sureties to be approved by the judge of this court.

And the plaintiff here now waives the issuance and service of citation, and the appellants presented their bond, which is by the judge approved.

Which assignment of errors is as follows:

United States Circuit Court, Eastern District of Arkansas, Western Division.

57 W. M. Fishback *et al.* v. Pacific Express Company. } Assignment of Errors.

The appellants herein make the following assignment of errors in the above-entitled cause, namely:

The court erred in overruling the demurrer of the appellants, defendants below, to the complaint of the plaintiffs below and appellee here, and in holding the act of the General Assembly of the State of Arkansas approved April 8, 1893, entitled an "Act to assess and collect taxes from certain corporations," to be void. Wherefore, for the errors above assigned, the appellants pray that the decree rendered in this case be reversed.

JAMES P. CLARKE,
Attorney General, Solicitor for Appellants.

Filed February 20, 1894.

RALPH L. GOODRICH, *Clerk.*

Which petition for appeal is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

Pacific Express Company
v.
W. M. Fishback *et al.*

Now, on this 20th day of February, 1894, come the defendants and pray an appeal in this cause to the Supreme Court of the United

States on the ground that the decision herein involves the
58 validity of a statute of the State of Arkansas, and the court
actually decided herein that the same is invalid.

JAMES P. CLARKE,
Attorney General, Solicitor for Defendants.

Filed February 20, 1894.

RALPH L GOODRICH, *Clerk.*

Which bond is as follows:

Know all men by these presents that we, the undersigned, are held and firmly bound unto the Pacific Express Company in the full and just sum of two hundred and fifty dollars, to be paid to it or its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, 1894.

Whereas lately, at a term of the circuit court of the United States for the western division of the eastern district of Arkansas, in a suit depending in said court between the Pacific Express Company as complainant and the obligors herein as defendants, except James P. Clarke, who signs this bond as surety, a final decree was rendered against the obligors, except Clarke, and the said obligors have appealed the said cause to the Supreme Court of the United States:

Now, the conditions of the above obligation are such that if the said obligors, except Clarke, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation is to be void; else to remain in full force and effect.

59 W. M. FISHBACK. [SEAL.]
H. B. ARMISTEAD. [SEAL.]
C. B. MILLS. [SEAL.]
R. H. CONE. [SEAL.]
JAMES H. ABRAHAM. [SEAL.]
M. M. SMITH. [SEAL.]
A. C. BROADAWAY. [SEAL.]
JOHN W. KILLOUGH. [SEAL.]
L. E. MORGAN. [SEAL.]
JOHN R. THOMPSON. [SEAL.]
JAMES M. HOBGOOD. [SEAL.]
CLINT LE MAY. [SEAL.]
J. M. MERONY. [SEAL.]
JAMES H. HICKS. [SEAL.]
JOHN A. LOVEWELL. [SEAL.]
W. M. MUNN. [SEAL.]
JOHN B. GANTT. [SEAL.]
A. S. REINHARDT. [SEAL.]
J. F. SHOPPACH. [SEAL.]

T. W. BUGG. [SEAL.]
W. E. WILLIAMS. [SEAL.]
M. H. PATTERSON. [SEAL.]
P. M. BLACK. [SEAL.]
R. L. HANCOCK. [SEAL.]
T. J. GRIMMETT. [SEAL.]
JOHN STEWARD. [SEAL.]
E. R. SHUGOT. [SEAL.]
J. B. WILSON. [SEAL.]
JAMES C. JONES. [SEAL.]
T. J. OWENS. [SEAL.]
60 A. G. THOMPSON. [SEAL.]
WILLIAM CHILDERS. [SEAL.]
T. T. BATEMAN. [SEAL.]
LEE PENDERGRASS. [SEAL.]
ANDERSON MILLS. [SEAL.]
JOHN. P. CLARK. [SEAL.]
J. S. LEE. [SEAL.]
T. P. JOHNSON. [SEAL.]
B. G. WHITE. [SEAL.]
W. W. SWEPTON. [SEAL.]
H. L. HENRY. [SEAL.]
W. P. RICHARDSON. [SEAL.]
B. C. FITZHUGH. [SEAL.]
J. H. POWERS. [SEAL.]
W. T. DERRICK. [SEAL.]
A. S. BLYTHE. [SEAL.]
J. N. WASSON. [SEAL.]
A. HAMILTON. [SEAL.]
W. J. JOHNSON. [SEAL.]
W. H. HOGAN. [SEAL.]
W. C. NORRIS. [SEAL.]
T. L. HARDER. [SEAL.]
JAMES P. CLARKE, *Surety*. [SEAL.]

This bond is approved this 20th day of February, 1894.

JOHN A. WILLIAMS, *Judge*.

Filed February 20, 1894.

RALPH L. GOODRICH, *Clerk*.

61 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and of the assignment of errors and of all proceedings in the case of The Pacific Express Company against Wm. M. Fishback *et al.*

In witness whereof I have hereunto set my hand and the seal of said court this 23rd day of February, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and eighteenth.

The Seal of the Circuit Court,
Western Division of East.
Dist. Ark., U. S. A.

Attest: RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: Case No. 15,526. E. Arkansas C. C. U. S. Term No., 657. William M. Fishback *et al.*, appellants, *vs.* The Pacific Express Company. Filed March 12th, 1894.

WM. M. FISHBACK AND

THE WESTERN UNION

No.

THE PACI

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 656.

WM. M. FISHBACK AND OTHERS, APPELLANTS,

v.

THE WESTERN UNION TELEGRAPH COMPANY.

AND

No. 657.

THE SAME, APPELLANTS,

v.

THE PACIFIC EXPRESS COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STAT
FOR THE EASTERN DISTCICT OF ARKANS[illegible]S.

BRIEF FOR APPELLANTS.

These two cases are so similar, as to facts and law involved, and the object sought by them, they may be considered together, as certainly a decision in one will dispose of the other.

The complaints in both are to enjoin the proper officials in Arkansas, from levying and collecting certain taxes assessed on the property of the appellees, insisting that the law under which these taxes are claimed is unconstitutional. (See the Act in record 657, p. 13–15.)

These complaints were demurred to in the court below, and on argument, the demurrers were overruled, and appellants stood on their demurrers and said no more, and the court entered a final order in accordance with the prayers of the complaints, and from these decrees of that court these appeals are taken. (Rec. in 656, p. 28–29. Rec. in 657, p. 35.)

The assignments of errors allege the court erred in overruling the demurrers, and in holding the act of the Legislature of Arkansas unconstitutional, etc., etc. (Rec. 656, p. 29. Rec. 657, p. 36.)

In the beginning, a question of jurisdiction meets us that would seem to put an end to these suits. On page two (2) of both records, it appears there is an allegation that the amount or value in controversy, exclusive of interest and costs, exceeds the sum of two thousand dollars, and it does not appear anywhere that the amount or value in any of the distinct county assessments exceeds this sum. This must be shown before the court could entertain jurisdiction; and [illegible] this be shown as to one or more counties, the defendants could not be joined in a single suit.

Walter v. N. E. R. R. Co., *147 U. S.*, *370*;
N. P. R. R. Co. v. Walker, *148 Ib.*, *391*.

These cases would seem to be decisive of the present suits, and evidently from the showing in these records, the privilege allowed the railroad in the Walker case, *148 U. S. sup.*, to amend the bill in order to show this, would avail nothing here.

Courts are not favorable to enjoining the collection of taxes, and strong cases must be made out to justify such an interference with the State's authority to collect its revenue.

In the first place, the States themselves furnish tribunals to correct all errors and mistakes and illegal acts in this behalf, and parties supposing themselves aggrieved should go there.

Stanly v. ~~Suspensions~~, 121 U. S., 535;
isors *Williams v. ~~Suspensions~~, 122 Ib., 154.*

The mere allegation that the tax law is illegal, or invalid, is no reason for interference by injunction; and the party asking for this relief must show he tendered the amount that was due before he could be heard.

Dows v. Chicago, 11 Wall., 108;
Hannewinkle v. Georgetown, 15 Ib., 547;
State Railroad Tax Cases, 92 U. S., 575;
National Bank v. Kimball, 103 Ib., 732;
Shelton v. Platt, 139 Ib., 591;
Allen v. Pullman Co., Ib., 658;
N. P. Railroad Co. v. Clark, 153 Ib., 252.

Then, upon general principles, there is no proper showing in these cases, for the interposition of equity, admitting all the complainants say to be true.

But suppose the question of jurisdiction as to all matters be settled in favor of these parties. The point of reliance is the act of the Legislature of Arkansas is unconstitutional, and for the reasons especially, it fails to provide a uniform system of taxation, and imposes unequal burdens on these companies, burdens different and higher than those put upon property of the people of the State; and is in conflict with the clause of the Constitution of the United States which gives Congress power to regulate commerce among the States, etc. This presents to this court no new or unfamiliar ground. The court will find, upon examination, that this act (Rec. p. 13–15, No. 657) is quite similar to others passed on by this court:—in fact, almost a transcript, and the decisions in them we invoke as settling these cases.

Pullman, etc. v. Pennsylvania and against *Hayward,*
141 U. S., 18-39;
Mass. v. Western, etc., Ib. 40.
Postal Tel. Co. vs Adams
155 U. S., 688.

The citations in these [illegible] these points and we need not elaborate further.

The court below, in disposing of these controve favored us not with any reason for holding the law of Ark sas invalid, and we are therefore left, under the decisio *141 U. S., sup.*, to conjecture why there should be one l for Massachusetts and Pennsylvania, and another for Arkan sas; and it is respectfully submitted to this court to tell why

JAMES P. CLARKE,

A. H. GARLAND,

R. C. Garland *For Appellan*

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM M. FISHBACK ET AL., *Appellants,*
v. } No. 656.
THE WESTERN UNION TELEGRAPH CO., *Appellee.*

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The appellee filed its bill in the court below against Fishback, Armistead and Mills, constituting the Board of Railroad Commissioners of the State of Arkansas, and various clerks of the different counties in the State in which it had lines of telegraph, making substantially the following allegations:

That the plaintiff was a corporation created and organized under the laws of the State of New York, that each of the defendants was a citizen of the State of Arkansas, and that the amount or value in controversy in this suit exceeded the sum of $2,000, exclusive of interest and costs.

That on and prior to the 8th day of April, 1893, the plaintiff was, and had ever since been, engaged in the business of operating telegraph lines and sending telegrams over the same to different parts of the United States, with extensive cable lines under the sea, having its general office in the city of New York. That on the day last named the General Assembly of the State of Arkansas passed the following act:

"AN ACT

"TO ASSESS AND COLLECT TAXES FROM CERTAIN CORPORATIONS.

"*Be it Enacted by the General Assembly of the State of Arkansas:*

"Section 1. That it shall be, and it is hereby made the duty of every sleeping or dining car company, express company, or telegraph company, incorporated by the laws of this or any other State, and carrying on business in this State, on the first Monday in July, 1893, and every second year thereafter, to make out and file with the Board of Railroad Commissioners of this State a statement showing in detail the following:

"First. A certified copy of the articles of incorporation under which the said company is organized and carrying on business; said copy is to be filed but once unless the board shall otherwise direct.

"Second. The amount of capital stock subscribed, whether designated as common or preferred stock, or by any other name or description, showing the par value of each share, and the market value thereof at the time said certificate is required to be made.

"Third. The total number of miles of railway, within or without this State, over which such sleeping or dining car company runs its cars, or such express company carries on its business; and the number of miles of line within and without this State which any such telegraph company employs in the transaction of its business.

"Fourth. The number of miles of railway in this State over which any such sleeping or dining car company may be running its cars, and over which any such express company may be carrying on its business, and the number of miles of line which any such telegraph company may employ in this State in the transaction of its business. The statements contained in any such certificate shall be sworn to by a general officer of such corporation whose service therein makes it his duty to be personally informed about the matters to be included in such certificate. False swearing in making any of the statements required to be set forth in said certificate is hereby declared to be perjury, and shall be punished as such. If the Board of Railroad Commissioners shall have reason to believe that any statement contained in any such certificate filed with them is false in any material matter, it is hereby made their duty to procure other information about the matters to be contained in such certificate. The said board shall also have power and it is hereby made their duty to resort to other sources of information in the event any such corporation shall fail or refuse to file the certificate aforesaid.

"Section 2. When such certificate shall have been filed with said board, or such other information obtained, the said board shall proceed to ascertain the value of the entire capital stock of each and every one of the corporations aforesaid, and shall thereupon fix the sum at which the property of any such corporation shall be assessed in this State for purposes of taxation, by taking the same proportion of the aggregate value of the capital stock of any such corporation as the number of miles of railway in this State over which such sleeping or dining car company, or express company carries on its business, or as the number of miles of line employed in this State by any such telegraph company in the transaction of its business bears to the aggregate number of miles of railway within as well as without this State over which such sleeping or dining car company or express company carries on its business; or in the case of any such telegraph company, the number of miles of line employed in this State bears to the entire number of miles employed by it within as well as without this State.

"Sec. 3. After the said board shall have ascertained the aggregate amount to be assessed against the property of any such corporation, the said board shall further ascertain the parts of such aggregate valuation to be apportioned to the several counties in which such property is subject to taxation, which shall be done by dividing the aggregate amount fixed as said taxable value in this State by the entire number of miles of railway or telegraph lines lying and being situated in any county, and the product thereof is the sum to be taxed in such county; and it shall be the duty of the secretary of State, at the same time that he is required to certify the assessment of rolling stock of railroad corporations to certify to the assessor of said respective counties in which said sums are to be taxed, the amount to be taxed in each particular county, and said assessor shall list and assess the same as personal property, designating the same as 'Capital Stock of ———.' Before the county court shall allow the assessor any compensation for his services it must appear that this entry has been properly made upon the proper assessment book.

"Sec. 4. If it shall appear that any telegraph, express or sleeping or dining car company has been doing business in this State before the passage of this act under such circumstances as to render its property liable to taxation under the constitution and laws of this State, and that from any cause it has not been assessed for taxation, then and in that event it is hereby made the duty of the attorney general to forthwith institute a suit or suits in equity for the purpose of having such omitted taxes assessed and collected for the year or years for which the property of said corporation so escaped taxation, and any assessment made in the progress of any such suit shall be made in the manner and by the board designated in this act to whom the same shall be referred by proper order of the court before which any such suit may be pending; and such assessment when so made shall be by said board certified to said court, and shall be made the basis of its decree, if liability shall otherwise be found to exist. Said proceedings shall be conducted so far as the same may be applicable under the provisions of this act and of the act approved March 1, 1887, being 'An act to provide for the collection of overdue taxes from corporations doing business in this State.'"

That as required by said act the plaintiff filed its statement with the said board (protesting, however, that said act of April 8, 1893, was void;) which contained the following statements, which are in all respects true, viz:

That on the 1st day of July, 1893, the plaintiff had its principal place of business at 195 Broadway, New York, but had a principal office for the State of Arkansas in the city of Little Rock. That its then total capital stock was $94,820,000, consisting of 948,200 shares of the par value of $100 each. That on the 1st day of July, 1893, there was no market value for all of said stock, but that it was sold or speculated upon on that day on the stock exchange to the amount of 6,004 shares, at prices ranging from 81¼ to 83 cents per share. That most of the sales were speculative without any delivery of the stock, and that in the nature of the case there can be no market value for all the shares. That any price which the shares may have includes among other things a consideration of the plaintiff's franchises granted to it or exercised by it in the State of New York, by the United States of America, Canada, Great Britain, Cuba and other countries, a consideration of its prospective management, its contracts or relations to powerful railroad, telephone and cable companies, which are of great value to the company, but are not taxable in Arkansas; including, also, that which is situated in Arkansas and which is taxable by it. In estimating the market value of shares, the value of such real or personal property of the company situated in Arkansas cannot be distinguished from the intangible franchise, rights, contracts, management and good will of the plaintiff, which are beyond the jurisdiction of the State.

That the company was the owner of 189,576 miles of telegraph extending through the United States, Canada, the high seas, Cuba and England; and that the length of its lines in Arkansas was 2,010. That a fair valuation of its property in that State, which consists entirely of telegraph lines and appurtenances, could not be ascertained even approximately by applying the proportion which such mileage in Arkansas bears to the entire mileage of the company to the valuation of all the shares of the plaintiff's stock, because such valuation includes elements of value not existing in the State of Arkansas; and because the lines of telegraph outside of the State are not of uniform value per mile. That the value of the lines in Arkansas, based on actual cost, less depreciation, will not exceed $102,229.68, and that the plaintiff's entire plant in Arkansas could be constructed anew at a cost of $290,282.71. That the plaintiff owns thousands of miles of lines in cables under the sea, costing between $3,000 and $4,000 per mile, whereas the cost of the lines in Arkansas does not exceed $71.24 per mile. That while the cost per mile in Arkansas can be averaged with substantial accuracy, because the conditions existing are substantially uniform, yet that in the more densely settled portions of the country like Massachusetts, New York, Pennsylvania and New Jersey, where the company's main trunk lines are larger, the lines are more costly; the company possesses thousands of miles of line there which cost as much as $2,500 a mile. That the company also has a large mileage of line laid under ground costing much more than its lines in Arkansas, while it has extensive lines in the far west which have been built at a much greater expense on account of the absence of timber and the cost of transportation. That the plaintiff also owns large amounts of bonds and stocks of other companies, principally telephone companies and local telegraph companies, of the aggregate value of $7,633,230.12, none of which are corporations of the State of Arkansas; and that it has also large investments in real estate in New York, Chicago and other cities and towns in the United States and Canada outside of the State of Arkansas, the cost of which was $10,507,826.64. That it is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of it is in some degree used for the company's business, but not exclusively. That the large office buildings in New York and Chicago are only partly used for the company's business, the remainder of them being rented to tenants. That some of this property is exempt from taxation by local laws, and some of it for local reasons is assessed below its actual value. That any apportionment to Arkansas of the company's capital stock on the mileage basis will necessarily include the value of said shares, bonds, real estate, franchises, contracts and other rights, all of which are outside of the jurisdiction of the State of Arkansas. That the gross receipts of the plaintiff throughout its entire system average $32 per mile of wire, while in Arkansas the average is $23 per mile; that the net earnings of the entire system average $10 per mile of wire, but in Arkansas do not exceed $6 per mile of wire per annum. That if the entire capital of the company be taken at the stock exchange price of July 1 last, and for the apportionment of the State of Arkansas upon the mileage basis set forth in said act be taxed at the rate of 2 per cent, which is probably the average rate of taxation in Arkansas, it would require the company to pay a tax annually in this State of about $18,000. That as the net earnings of the plaintiff from all of its business in said State do not exceed $37,000, the annual tax would therefore nearly equal 50 per cent of the entire income of the company in this State, which is a rate of taxation unheard of, grossly unequal and substantially destructive.

That on the 1st day of July, 1867, the plaintiff formally accepted the provisions of the act of July 24, 1866 (Rev. St. U. S., secs. 5263-5269), that all the telegraph lines in the State of Arkansas are the plaintiff's; that they are constructed and operated upon the railroad, streets and post roads of the United States; that by virtue thereof the company is the agent of the United States for the transmission of dispatches in the State of Arkansas, and from and to points without the State of Arkansas, for the government of the United States and for the citizens thereof; that the enforcement of the scheme of taxation provided for in this act will substantially destroy the value of the property of this company in the State of Arkansas constructed upon such post roads, and operated by the company in the performance of its functions under said act of Congress, and will therefore prevent it from the due performance of its obligations thereunder.

That after said report was filed by the plaintiff said board, claiming to proceed under said act, assessed the property of the plaintiff within the State at the sum of $195 per mile of its lines of telegraph therein, making the total amount of property thus assessed against the plaintiff $396,387, which assessment is grossly excessive. The said assessment bears no relation to the value of the plaintiff's property situated in the State of Arkansas, and is many times greater than the value of all the property owned by it or used by it in the State. That when making it the said board intentionally included the value of the property which was not situated in the State or subject to its jurisdiction.

That by the constitution of the State of Arkansas taxes are required to be uniform in their operation. That all property subject to taxation is required to be taxed according to its value, which is required to be ascertained by an equal and uniform method throughout the State, and that no species of property is permitted to be taxed higher than any other species of equal value.

That said board in pursuance of said act had certified the said assessments to the county assessors for the several counties of the State who had listed the same as property owned by the plaintiff and subject to taxation for the year 1893 in said counties, and had returned said assessment to the county clerks of the counties, who were made defendants to the suit. That it was by law the duty of said clerks to make out the tax books for their respective counties, and to enter the said several assessments thereon, to levy the taxes thereon at the rate fixed by law, to extend the same upon said tax books and deliver them to the tax collector, together with a warrant authorizing and requiring the collection of the taxes.

That the taxes thus assessed would be an apparent lien upon the property of the plaintiff constituting a cloud upon it, and that the plaintiff would be harassed by a multiplicity of suits growing out of said illegal transactions.

The bill prayed for an injunction against the board and the several clerks above mentioned.

It was filed on the 29th of December, 1893 (19).

On the 29th of January, 1894, the plaintiff filed a supplement to the bill, which set out that since the filing of the original bill the defendants, the clerks, had made out the tax books and delivered them to the collectors of their several counties. The supplemental bill therefore made the tax collectors parties to the suit. It also stated that the plaintiff did not seek to escape any just or legal taxation, but was always ready to pay all lawful taxes; that it could not pay or tender payment of taxes upon its property or pay the sum into court, for the reason that no valid assessment had been made from which the amount of the legal taxes could be ascertained; but that if the court should be of opinion that the property of the plaintiff could be yet legally assessed for taxation the plaintiff was ready and willing to submit to the same, and to pay all taxes found due thereby (24).

The defendants filed a general demurrer to the original and supplemental bills (28).

On the 20th of February, 1894, the demurrer came on for argument, was overruled, and the defendants were perpetually enjoined from taking any step to enforce the taxes upon the assessment set up in the bill (29).

Thereupon the defendants filed their assignment of errors, alleging the overruling of said demurrer, and appealed to this court.

BRIEF FOR APPELLEE.

1. As to Jurisdiction.

This question was not raised in the court below, and there is nothing in the record to show that the allegation as to the amount in controversy made in the bill is not true. It is stated in the bill that the average tax throughout the State is probably about two per cent; but of course in cities and towns it would greatly exceed the average.

The whole machinery for the enforcement of the illegal tax is placed in the hands of the Board of Railroad Commissioners, the clerks and assessors being merely subordinate agencies. The bill shows that the total amount of the annual tax sought to be enjoined is about $18,000 (Rec., p. 8).

The question as to jurisdiction, not having been raised in the court below, it is not before this court; and there is no certificate from that court of the question of jurisdiction to be decided.

Maynard *v.* Hecht, 151 U. S., 324.

2. As to Tender.

It is objected that no tender of the taxes justly due was made. This is an error (Rec., 28). Without an official assessment under a constitutional law it would not be possible to make a tender more specific.

3. As to the Injunction.

The Constitution of Arkansas contains the following provision:

> "Any citizen of any county, city or town may institute suit in behalf of himself and all others interested to protect the inhabitants thereof against the enforcement of any illegal exactions whatever."

Art. 16, sec. 13.

The statute of Arkansas provides that the judge of the circuit court may grant injunctions and restraining orders in all cases of illegal or unauthorized taxes and assessments by counties, cities or other local tribunals, boards or officers.

Hill & Sandel's Digest (1894), sec. 3778.

This was a proper case for the issue of an injunction.

Greenup *v.* Franklin Co., 30 Ark., 101.

Vaughan *v.* Bowie, id., 278.

Cummings *v.* National Bank, 101 U. S., 153.

Pelton *v.* National Bank, id., 143.

Union Pac. R. R. Co. *v.* Cheyenne, 113 id., 526.

Chapman *v.* Brewer, 114 id., 171.

Virginia Coupon Cases, id., 295.

The jurisdiction in this case exists because a sale under the illegal proceedings sought to be enjoined would cast a cloud on the title of the plaintiff to lands, and because the injunction prayed for is necessary to prevent a multiplicity of suits.

But as the jurisdiction has been exercised and sustained in most of the cases hereafter to be cited, we need not pursue this question farther.

4. As to the Merits.

We start out with the proposition that the State cannot tax lands lying beyond its borders, or personal property, natural or artificial, domiciled in another State.

Railroad Co. *v.* Pennsylvania, 15 Wallace, 300.
Hays *v.* Pacific Steamship Co., 17 How., 596.
Crandall *v.* Nevada, 6 Wall., 35.
McCulloch *v.* Maryland, 4 Wheat., 432.
Railroad Co. *v.* Jackson, 7 Wall., 262.
Cannon *v.* New Orleans, 20 id., 577.
St. Louis *v.* Ferry Co., 11 id., 423.
Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 206.
Minot *v.* Philadelphia, R. Co., 18 Wall., 229.

It is exceedingly plain that if the act in question could be enforced by far the larger part of the tax collected from the appellee in Arkansas would be collected on property not within her limits.

In Delaware Railroad Tax Case, 18 Wall., 230, the court said:

" * * * Assuming that the tax is upon the property of the corporation, if the ratio of the value of the property in Delaware to the value of the whole property of the company be less than that which the length of the road in Delaware bears to its entire length, and such is admitted to be the fact, a tax imposed upon the

The tax in this case violates this provision. Pac. Express Co. *v.* Seibert, 142 U. S., 339.

The legislature cannot tax any calling or pursuit for the purpose of raising State revenue.

Baker *v.* State, 44 Ark., 134.
State *v.* Washmood, 58 id., 609.

Counsel for appellant are pleased to say:

"The court below, in disposing of these controversies, favored us not with any reason for holding the law of Arkansas invalid, and we are therefore left under the decisions in 141 U. S., *sup.*, to conjecture why there should be one law for Massachusetts and Pennsylvania, and another for Arkansas; and it is respectfully submitted to this court to tell why?"

The answer does not seem to involve much difficulty. The bill in this case shows that the conditions in the States mentioned are widely different. Massachusetts and Pennsylvania contain a comparatively dense population. They both contain large cities which are the centers of extensive commerce. The proportion of telegraphic business done in those States, and the amount of capital there invested, must be much larger than the general average of the States. Indeed, the question thus propounded was anticipated and answered in W. U. Tel. Co. *v.* Massachusetts, 125 U. S., 553, where the court said:

"It is very clear to us, when we consider the limited territorial extent of Massachusetts, and the proportion of the length of the lines of this company in that State to its business done therein, with its great population and business activity, that the rule adapted to ascertain the amount of the value of the capital engaged in that business within its boundaries, on which the tax should be assessed, is not unfavorable to the corporation, and that the details of the method by which this was determined have not exceeded the fair range of legislative discretion. We do not think that it follows necessarily, or as a fair argument from the facts stated in the case, that there was injustice in the assessment for taxation."

Hence it was that in Massachusetts *v.* W. U. Tel. Co., 141 U. S., 145, the court said:

> " * * * The rule adopted to ascertain the amount of the value of the capital engaged in that business within its (the State's) boundaries, on which the tax should be assessed, is not an unfair or unjust one."

Certainly that remark could have no application to the present case.

There is nothing in Pullman's Car Co. *v.* Pennsylvania, 141 U. S., 25, that militates against our contention. The tax in that case was upheld because the property on which it was levied was found within the limits of the State imposing the tax. The court said:

> "The cars of this company within the State of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the State; and the State has not taxed them because of their being so employed, but because of their being within its territory and jurisdiction * * * The State, having the right, for the purposes of taxation to tax any personal property found within its jurisdiction, without regard to the place of the owner's domicile, could tax the specific cars which at a given moment were within its borders."

In view of the very recent decision in Postal Telegraph Cable Co. *v.* Adams, 155 U. S., 688, we think it not necessary to pursue the subject further.

Respectfully,

Willard Brown,

Charles W. Wells,

U. M. Rose,

Attorneys for Appellees.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 341.

WILLIAM FISHBACK ET AL.,
Appellants,

v.

THE WESTERN UNION TELEGRAPH
COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KANSAS.

Additional Brief for the Appellee.

The brief for the appellee filed by our associate counsel, Messrs. BROWN, WELLS & ROSE, contains a full statement of the case, to which we refer. It is unnecessary, therefore, for us to make another statement. The brief contains a discussion of the propositions arising in the case and citation of authorities. It is not intended in this brief to cover the ground already traversed in that brief, but only to present somewhat more fully certain aspects of the statute by which, in our opinion, the unconstitutionality of the Arkansas statute under which the assessment in question, as well as the assessment itself, is rendered apparent.

I.

The Act of the Legislature of Arkansas of April 8, 1893 (Acts of Ark., 1893, p. 232), under which the assessment now in question was made, is set forth at large in the brief of Messrs. **Brown**, **Wells & Rose**, with the exception of the last section, which is as follows:

> "Sec. 5. That all acts or parts of acts in conflict with this act be, and the same are hereby, repealed, and that this act take effect and be in force from and after its passage."

The record shows that on the 1st day of July, 1867, the Western Union Telegraph Company in due form accepted the provisions of the Act of Congress of July 24, 1866 (Rev. Stats. U. S., 5262-5269). The text of this important act, as well as of the Act of June 10, 1872, which imposes heavy penalties upon companies which, having accepted the Act of July 24, 1866, refuse or neglect to observe it, together with a discussion as to the scope and effect of the said Act of July 24, 1866, upon the Western Union Telegraph Company in respect of the questions arising on the present record, will be found in APPENDIX No. I. to the present brief, to which we request the attention of the Court.

QUESTIONS SIMILAR TO THOSE PRESENTED IN THE PRESENT RECORD, though not the same in all respects, arise in case No. 662, namely, the *Western Union Telegraph Company, plaintiff in error, vs. Thomas Taggart,* auditor of Marion County, Indiana, in error to the Supreme Court of Indiana, in which we have filed a brief, discussing the question of the taxation of the franchises and property of the Western Union Telegraph Company under a similar, but in some respects different, enactment of the State of Indiana of March 6, 1893. The brief in that case we make part of the brief in this case, and annex the same hereto as APPENDIX No. II. We respectfully ask the Court to regard that brief as part of our argument in this case as fully as if it were entitled in this cause.

II.

JURISDICTION : The brief of the appellant raises the question that the Circuit Court of the United States had no jurisdiction of this cause. The objection is thus stated on page 3 of the brief of Messrs. CLARKE and GARLAND :

> "It appears that there is an allegation that the amount or value in controversy exclusive of interest and costs exceeds the sum of $2,000 ; and it does not appear anywhere that the amount or value involved in distinct county assessments exceeds this sum."
>
> Citing *Walter vs. Northeastern R. R. Co.*, 147 U. S., 370, and *Northern Pacific R. R. Co. vs. Walker*, 148 U. S., 391.

We maintain that under the averments of the bill the Circuit Court had jurisdiction on two grounds : (1) On diverse citizenship (Record, p. 2) ; and (2) because the case made by the bill is one arising under the Constitution and laws of the United States, in which the amount in dispute exceeds, exclusive of interests and costs, the sum or value of $2,000.

(1) On the subject of jurisdiction on the ground of diverse citizenship, we refer to the brief of Messrs. **Brown**, **Wells** and **Rose** (p. 13), and to the brief of Messrs. **Morsman** and **Moore**, counsel for the appellee (pp. 3 to 5), in the case of *William M. Fishback et al., appellants, vs. The Pacific Express Co.*, appellee, being No. 342 on the docket of this Court, where a similar question arises and in which they show that the case at bar does not fall within the cases of *Walter vs. N. E. R. R. Co.* and *Northern Pacific R. R. Co. vs. Walker*, *supra*, relied on by the appellants.

(2) We make in this case the further point that the case made by the bill is one arising under the Constitution and laws if the United States, in which the matter in dispute, exclusive of interest and costs, exceeds the sum of $2,000.

The whole frame, scope and purpose of the bill is based upon the rights of the complainant, under the consolidation of the United States and under the Act of Congress of July 24, 1866 (see Appendix No. 1 to this brief), as an agency of the Federal Government, and as a corporation engaged in the business of interstate commerce, for relief against the violation of its legal rights arising under the Constitution and laws of the United States, by the Board of Tax Commissioners, the main defendants, and the threatened violation of its rights by the ancillary defendants, the County Clerks and Collectors of the various counties in the State in which the property of the telegraph company is situated.

The plaintiff, in raising the question of jurisdiction, overlooks the following material allegation of the bill bearing upon the jurisdiction of the Circuit Court:

> "The company further represents that on July 1st, "1867, it formally accepted the provisions of the act "of July 24, 1866 (now sections 5263-5269 of the Revised Statutes of the United States); that all the "telegraph lines in the State of Arkansas which it "owns, leases or operates, are erected and constructed "upon the railroads, streets and other post roads of "the United States; that by virtue thereof this company is an agent of the Government of the United "States in the transmission of intelligence by electricity from point to point within the State of Arkansas, and from or to points without the State of Arkansas to or from points within the State of Arkansas, "for the Government of the United States, and for the "citizens thereof; that the enforcement of this scheme "of taxation provided in the said supposed law of the "State of Arkansas, 1893, *will substantially destroy* "*the value of the property of this company in the* "*State of Arkansas*, constructed under such post roads "and operated by this company in the performance of "its functions under said Act of Congress, and thereby "prevent it from the due performance of its obligations "thereunder" (Record, p. 8).

It alleges, in addition to the allegations above quoted, that the enforcement of the said tax will result in great and irreparable injury to your orator, and in a multiplicity of suits, for which there is no adequate remedy at law, and the bill prays for a full discovery and relief against all of the defendants. and especially the defendants William M. Fishback, Henry B. Armistead and Charles B. Mills, they being the State Board of Tax Commissioners, and for a writ of injunction

> "perpetually enjoining and restraining the said defendants, and all persons acting under them, from in any manner proceeding pursuant to the said Act of the General Assembly of the State of Arkansas, or pursuant to the said assessment of the said Board of Rail-

> road Commissioners, to execute the said act or the said assessment made as aforesaid; and that each of the said defendants, County Clerks, as hereinbefore alleged, may be specifically restrained and enjoined from entering the said several assessments upon the tax books of their respective offices, and from levying any tax thereon or extending the same upon the tax books of their respective counties, and from issuing any warrant for the collection of the same."

It is further alleged (Record, p. 2)

> " that the amount or value in controversy in this suit exceeds the sum of $2,000, exclusive of interest and costs."

These allegations are admitted to be true be the demurrer. There is nothing in the bill which negatives or in any manner qualifies the aforesaid express averment that the amount or value in controversy exceeds $2,000, exclusive of interests and costs; on the contrary, it is alleged in the bill that under the Act of 1893 the appellee " will be required to pay a tax annually to this State of about $18,000 " (Record, p. 8).

It is plain that the bill would have been well brought against said Fishback, Armistead and Mills, the Board of Tax Commissioners of the State of Arkansas, without joining the other defendants, and all the relief necessary to the plaintiff could have been had on a bill thus framed; and this being so, the allegation that the sum or amount involved exceeds $2,000, exclusive of interest and costs, is manifestly sufficient. It cannot defeat the jurisdiction of the Court under these circumstances that the other defendants were made against whom ancillary and merely nominal relief was sought.

In addition to this, however, and as conclusive on this point, the amount involved in the case made by the bill is not simply the taxes assessed for 1893, but is in reality the value of the Federal franchise of the complainant in the State of Arkansas, which was disregarded and imperiled by the action of the State under the Act of 1893.

The appellee, having accepted the provisions of the Act of July 24, 1866, and thereby having become an agent of the Federal Government, as we have heretofore discussed, is entitled to enjoin the collection of a State tax which it is alleged will imperil its existence, even although the amount in controversy in any particular county when it is distributed to such county may not reach the sum of $2,000. Such allegations appear in the bill in this case (Record, p. 8) as bring this case within the rule laid down in *Western Union Telegraph Co. vs. City Council of Charleston et al.* and *Postal Telegraph Cable Co. vs. Same* (56 Fed. Rep., 419), in which an ordinance of the City of Charleston requiring a so-called annual license fee of five hundred dollars was brought in question, but which, being a legitimate exercise of the police and taxing power of the State of South Carolina, this Court sustained in *Postal Telegraph Cable Co. vs. Charleston* (153 U. S., 692). In the Circuit Court an attack was made upon the right of the Court to take jurisdiction of the cause, for the reason that the amount in controversy did not exceed two thousand dollars besides interest and costs. This motion to the jurisdiction was overruled by SIMONTON, District Judge. We call attention to the opinion of SIMONTON, J., and the cases cited by him in support of his conclusions. Upon appeal this Court took jurisdiction in the cause and decided it upon the merits as heretofore stated, sustaining the jurisdiction of the Circuit Court.

Under the authority of these cases, and upon the allegations of the bill of complaint, no serious question can be made as to the jurisdiction of the Circuit Court over the case at bar.

III.

The statute of Arkansas under which the Board of Railroad Commissioners of that State made the assessment in question, differs materially from the statute of the State of Indiana of 1891, which was under consideration in this Court in the cases of *Railway Co. vs. Backus*, 154 U. S., and from the amendment to that law of March, 1893, which is involved in the case of *Western Union Tel. Co., plaintiff in error, vs. Thomas Taggart, defendant in error*, No. 662. The Act of March 6, 1893, of the State of Indiana involved in the latter case is entitled: "An Act supplementary to "and amendatory of the Tax Law of 1891," which was considered by this Court in the cases of Backus vs. Railway Company. In those cases, this Court held that, as to the original Act of 1891, the method of arriving at the valuation of the property of the railway companies, by taking the market value of the shares of their stock and dividing it by the mileage of lines, and then multiplying the value per mile by the number of miles in the State of Indiana, was not obligatory upon the board, but that it simply furnished evidence for the consideration of the board; and that the board, after arriving at the results obtained by that method, could still consider all other matters relating to the valuation of the railroad property which would enable the board to arrive at a true cash value of the parts of the railroad property within the State of Indiana (*Railway Co. vs. Backus*, 154 U. S., 435, 436.)

In the case of *Western Union Tel. Co. vs. Taggart*, auditor, the Supreme Court of Indiana, consider the amendatory Act of March 6, 1893, and construe that act as *in pari materia* with the Act of 1881, and thus construed by this Court, and as permitting in special cases the Board of Tax Commissioners to use the information derived from taking the mileage basis, in connection with all other information which may be before the board, and thus arrive at the true cash value of the property within the State. In the brief filed in this Court in the case just referred to (a copy of which is our Appendix No. 2 of this brief), we have discussed the force and effect of the allegations of the bill filed by the Western Union Telegraph Company in that case, and raised the question of how far the Board of State Assessors did adopt such method under the statute of Indiana; this Court will, however, consider the statute as construed by the Supreme Court of the State and treat it as conferring discretion upon the State Board of Tax Commissioners to consider and determine how far the result arrived at from taking the market value of the stock and apportioning it upon the mileage basis should be applied in fixing the cash value of the property for taxation.

But when we turn to the statute of Arkansas, no such question as we have just suggested as arising upon the construction of the Indiana statute can be raised under this statute. The Supreme Court of

Arkansas has not passed upon the question; so this Court is not embarrassed by any construction of the statute by the Supreme Court of that State. This case originated in the Circuit Court and comes from that Court to this Court.

In addition thereto the act under consideration is a complete act for the assessment of the companies enumerated in its first section, to wit, sleeping or dining-car companies, express companies and telegraph companies, and provides, as to those companies, a complete system for the assessing and collection of taxes. It renders obligatory upon the Board of Railroad Commissioners the following method of ascertaining the valuation of the property of the sleeping or dining-car, express or telegraph company, as the case may be. First, it is made the duty of the company to furnish a statement of the amount of capital stock subscribed, showing the market value thereof at the time the certificate is required to be made (Paragraph 2, Section 1); second, the company is required to furnish the number of miles of line within and without the State which the telegraph or other company employs in the transaction of its business. In case these statements are not furnished, or in case the Board of Railroad Commissioners have reason to believe that the statement made is false, it is thereupon made the duty of the board to procure other information about the matters to be contained in such certificate, and in case there is a failure or refusal to file this certificate, then it is made the duty of the board to resort to other sources of information (Paragraph 4, Section 1). It is to be observed, however, that the information to be sought by the board from other sources in case of a false report, or a failure or refusal to furnish any report, are the matters which the company is required to report under the provisions of paragraphs 2 and 3 of Section 1, already referred to, viz., the market value of the capital stock and the number of miles of line of the company involved within or without the State of Arkansas. With this information before the board, it is then required to proceed to ascertain the value of the entire capital stock ; and

" Shall thereupon fix the sum at which the property " of any such corporation shall be assessed in this State " for the purposes of taxation, by taking the same pro- " portion of the aggregate value of the capital stock of " any such corporation as the number of miles of " * * * line employed in this State by any such " telegraph company in the transaction of its business " * * * bears to the entire number of miles em- " ployed by it within as well as without this State."

Further, by Section 3, it is required that :

" After the said board shall have ascertained the ag- " gregate amount to be assessed against the property " of any such corporation, the said board shall further " ascertain the parts of such aggregate valuation to be " apportioned to the several counties in which such " property is subject to taxation, which shall be done " by dividing the aggregate amount fixed as said tax- " able value in this State by the entire number of miles " of railway or telegraph lines over which such corpo- " rations carry on its business in the entire State, and " the result shall be the value per mile of such capital " stock for the purpose of taxation ; and the value per " mile of such capital stock, ascertained as aforesaid, " shall be multiplied by the number of miles of railway " or telegraph lines lying and being situated in any " county, and the product thereof is the sum to be " taxed in such county."

In this act, as will be seen from these sections, there is absolutely no discretion given to the Board of Railroad Commissioners as to the method of valuation. Given the market value of the shares of capital stock, the number of shares outstanding, and the valuation of the entire property results therefrom as a mere mathematical conclusion. Given the aggregate value by this mathematical process, and the number of miles of line and a similar mathematical process, you reach the valuation per mile, and multiplying that by the mileage in each county, you reach the assessment for that county upon an arbitrary mileage basis, with no discretion whatever as to results vested in the Board of Railroad Commissioners.

In this important respect the Arkansas act differs from the Indiana Act of 1891, as construed by this Court in *Railwag Co. vs. Backus*, 154 U. S., 435, 436, and the Act of March 6, 1893, before the Supreme Court of Indiana, in the case of the *Western Union Telegraph Co. vs. Taggart*, now before this Court on writ of error.

It thus appears that the assessment in question was arrived at by the arbitrary, cast-iron mileage rule prescribed by the statute and based upon the market value of the shares of the stock at the particular time regardless of how that might be affected by peculiar circumstances, and regardless of the real relation of that market value to the real value of the property.

(A) In the method of valuation prescribed by the statute of Arkansas now in question, there is necessarily included a valuation of the Federal franchises of the Western Union Telegraph Company, which Federal franchises or the value thereof are not taxable by the State of Arkansas.

This is the first proposition argued by us in our brief in case No. 662, *Western Union Telegraph Company vs. Taggart*, pages 9 to 30, inclusive, of our brief in that case, which we submit herewith (being APPENDIX No. II. of this brief) in support of the foregoing proposition.

(B) The necessary effect of the method of taxation prescribed by the Arkansas Act of 1893 was to bring within the operation of the statute of Arkansas property or the value of property of the telegraph company outside of the State of Arkansas. Such taxation cannot be deemed "due process of law" under the Fourteenth Amendment to the Constitution of the United States; and, therefore, the statute of Arkansas requiring such a mode of assessment and the assessment made under it are unconstitutional and void.

This proposition is discussed in our said brief in the *Taggart* case (No. 662) from pages 31 to 40, inclusive, to which we refer in support of that proposition in the case now at the bar.

(C) The method prescribed by the Arkansas Act of April, 1893—to wit, the market value of the shares, &c., for ascertaining the true cash value of the entire property of the appellee—is a mode under which, as applied to the appellee, it is legally impossible that it should result in ascertaining the true cash value of the property of the appellee within the State of Arkansas,

and therefore such assessment upon the appellee (which is a Federal agency and engaged in interstate commerce) is in violation of the commerce clause of the Constitution and the Fourteenth Amendment.

The argument in support of this proposition is set forth in our brief in the *Taggart* Case, pages 40 to 42, inclusive, to which we now refer in support thereof in the present case.

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APPENDIX NO. I.

The Act of Congress of July 24, 1866; its Congressional History, and its True Construction and Effect.

1. The Act of July 24, 1866, entitled "An Act to aid "in the construction of telegraph lines, and to secure "to the Government the use of the same for postal, "military and other purposes," provides as follows:

SECTION 1. That any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or *post-roads of the United States which may have been or may hereafter be declared such by Act of Congress*, and over, under or across the navigable streams or waters of the United States: *Provided*, That such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post-roads; and any of said companies shall have the right to take and use from such public lands the necessary stone, timber and other materials for its posts, piers, stations and other needful uses in the construction, maintenance and operation of said lines of telegraph, and may pre-empt and use such portion of the unoccupied public lands subject to preemption through which its said lines of telegraph may be located as may be necessary for its stations, not exceeding forty acres for each station, but such stations shall not be within fifteen miles of each other.

SEC. 2. *And be it further enacted*, That telegraphic communications between the several departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of any of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

SEC. 3. *And be it further enacted*, That the rights and privileges hereby granted shall not be transferred by any company acting under this act to any other corporation, association or person: *Provided, however*, That the United States may, at any time after the expiration of five years from the date of the passage of this act, for postal, military or other purposes, purchase all the telegraph lines, property and effects of any or all of said companies at an appraised value to be ascertained by five (5) competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

SEC. 4. *And be it further enacted*, That before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by this act.

14 Statutes at Large, pp. 221, 222.

The provisions of the Act of July 24, 1866, are contained in Sections 5263, 5264, 5265, 5266, 5267, 5268 of the Revised Statutes of the United States, "*Title LXV., Telegraph.*"

By the Act of June 10, 1872 (17 Stats., 366), Congress imposed a heavy penalty upon the companies operating under the Act of 1866, for refusing to perform the service required by the Government, and the provisions of that act are re-enacted in *Section* 5269 of the Revised Statutes, as follows:

"Whenever any telegraph company, after having "filed its written acceptance with the Postmaster-"General of the restrictions and obligations required "by the Act approved July twenty-fourth, eighteen "hundred and sixty-six, entitled '*An act to aid in the* "'*construction of telegraph lines, and to secure to the* "'*Government the use of the same for postal, military* "'*and other purposes*,' or by this Title, shall, by its "agents or employés, refuse or neglect to transmit "any such telegraphic communications as are provided "for by the aforesaid act or by this title, or by the "provisions of section two hundred and twenty-one,

" Title 'The Department of War,' authorizing the
" Secretary of War to provide for taking meteorological
" observations at the military stations and other points
" of the interior of the continent, and for giving notice
" on the northern lakes and sea-board of the approach
" and force of storms, such telegraph company shall be
" liable to a penalty of not less than one hundred
" dollars and not more than one thousand dollars for
" each such refusal or neglect. [To be recovered by an
" action or actions at law in any district court of the
" United States "].

2. A brief reference to the history of the National Telegraph Act of 1866 will show that it is one of the most important statutes ever enacted by Congress. It originated in the Senate at the first session of the 39th Congress. At that session, the question of the expediency of establishing a *Government Postal Telegraph* was brought before Congress by a resolution of the Senate offered by Mr. Gratz Brown, of Missouri, directing the Committee on Post-offices and Post-roads to inquire into the expediency of authorizing the Post-office Department " to construct and operate telegraph lines *along the principal mail routes*, and in connection with the postal business to establish offices at such points as may be determined upon, open at all hours to the public and press, for safe and speedy transmission of despatches, under proper regulations, and at fixed minimum rates."

The Senate Committee thereupon reported a resolution, which was passed on February 23, 1866, requesting the Postmaster-General to lay before the Senate *information* in regard to the expediency of establishing, in connection with the Post-office Department, " *telegraph lines along the principal mail routes for use by the Government*, and to be open to the public at minimum rates of charge" (Cong. Globe, part 2, 1st Sess., 39th Cong., p. 979).

Before the report called for by this resolution was laid before the Senate, a bill, which finally became the present Act of July 24, 1866, was introduced by Senator Sherman, of Ohio, to incorporate the *National Telegraph Company,* with power to construct and operate telegraph lines over and along any of the POST-ROADS OF THE UNITED STATES. In view of the great importance of this measure, the purpose of which, as Mr. Sherman said, was "*to organize a company to immediately commence the construction of telegraph lines in the United States on the postal routes,*" he moved the reference of the bill to a Select Committee of five Senators to be appointed by the Chair. This motion being agreed to, the Chair appointed Mr. Sherman (chairman), Mr. Clark, Mr. Harris, Mr. Brown and Mr. Nesmith members of the committee.

A few days afterwards the report of the Postmaster-General, on the subject of a postal telegraph, was laid before the Senate, and it was referred on the 4th of June to this Select Committee. This report proved *unfavorable* to the expediency of connecting the telegraph with the postal service in the manner mentioned in the resolution of the Senate of February 23.

On the 7th of June Mr. Sherman, from the Select Committee on the bill to incorporate the National Telegraph Company, reported a bill "*to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes,*" which proposed to authorize the National Telegraph Company to exercise the rights and privileges mentioned in the present Act of 1866.

On the 27th of June the Senate resumed the consideration of the bill, when Mr. Grimes, of Iowa, for the purpose of making a *general law* on the subject of telegraphs, moved an *amendment* to the bill by which the words conferring the benefits of the act to the *National Telegraph Company* were stricken out, and the franchises intended to be granted to that company were conferred upon "ANY TELEGRAPH COMPANY NOW ORGANIZED OR WHICH MAY HEREAFTER BE ORGANIZED UNDER THE LAWS OF ANY STATE IN THIS UNION."

The amendment was agreed to, and the bill, as amended, after full discussion, passed the Senate. On July 11th it was reported to the House by the Committee on Post-offices and Post-roads, and passed that body. The bill was supported and opposed in Congress in the view that the avowed intention and effect of the measure were to make *the erection of telegraph lines on all the post-roads of the United States free to all corporations accepting the restrictions and obligations imposed by the act.*

3. The general scope of the objects of this important legislation may be thus stated:

FIRST. To encourage and promote the establishment of telegraph lines by the grant of the *right* to construct, maintain and operate those lines on all the *post-roads* of the United States.

SECOND. To secure to the Government the use of such lines for its public business, upon terms of priority, and at a cost to be regulated by the Postmaster-General.

THIRD. To enable the Government of the United States, at a subsequent time, to take existing properties and franchises in the form and manner and on the terms and conditions fixed by the provisions of the act, if it should determine to assume and control the telegraph business of the country.

It is evident that, by this legislation, Congress secured all the advantages of a telegraph system under Government management, with none of the disadvantages of such a syatem, which is so foreign to the genius of our American institutions.

Every telegraph company desiring to avail itself of the benefit of the Act of 1866 was required to file its *written acceptance* with the Postmaster-General of the "*restrictions and obligations* required by the act."

A part of those "restrictions and obligations" is contained and expressed in the 2d section of the act, which provides that:

> "Telegraphic communications between the several "departments of the Government of the United States "and their officers and agents shall, in their trans-"mission over the lines of any of the said companies, "have *priority* over all other business, and *shall be "sent at rates to be annually fixed by the Postmaster-"General.*"

Under this provision, the Postmaster-General fixes annually the rates at which Government messages shall be transmitted over the lines of the companies; and the Government thereby secures the use of these lines upon its own terms, and to the same extent as if they had been constructed and were owned by it and managed by its own officers and agents—as if they were in fact and law *Government telegraph lines.*

And in the case of *Western Union Telegraph Company vs. Texas* (105 U. S., 460) the Supreme Court decided that, so far as the business of the Government is concerned, the companies are Government agencies, and that a State tax on that business is accordingly unconstitutional (see other cases cited in Brief of Messrs. Brown, Wells & Rose).

Another part of the "restrictions and obligations required by the act" is found in the third section, which provides as follows:

> "That the United States may, at any time after the
> "expiration of five years from the date of the passage
> "of this act, for postal, military or other purposes,
> "*purchase* all the telegraph lines, property and effects
> "of any or all of said companies at an appraised value,
> "to be ascertained by five competent, disinterested
> "persons, two of whom shall be selected by the Post-
> "master-General of the United States, two by the com-
> "pany interested, and one by the four so previously
> "selected."

By this provision, the companies accepting the act are obliged, if Congress should determine to assume the telegraph, to dispose of their lines, properties and effects at a value to be determined in the manner provided in the statute. And there is undoubtedly implied in the act a correlative obligation on the part of Congress to take existing properties and franchises in the form and manner and on the terms and conditions fixed by the statute, in case it should conclude to assume full control of the management and administration of the telegraph.

4. The Act of 1866 is an express and present grant by the United States to every company, who has accepted the restrictions and obligations required by the act, upon a *valuable consideration*, of "the *right* to "*construct*, *maintain* and *operate* lines of telegraph "*over* and *along any* of the *post-roads of the United* "*States*, which may have been or may hereafter be de-"clared such by Act of Congress."

The act declares that any telegraph company, organized under the laws of any State, who has filed with the Postmaster-General its written acceptance of the act, shall have the *right* to construct and operate its lines through, over, along and under the land and waters therein mentioned.

It declares that the "*rights and privileges* hereby "granted" shall not be transferred by any company acting under the act to any other corporation, association or person.

It enacts that before any company shall "exercise any "of the *powers or priviliges* conferred *by this act*," it shall file with the Postmaster-General its written acceptance of the "restrictions and obligations" required by the act.

What are the rights, powers and privileges here referred to? They are included in the first section of the act which grants the right to *construct, maintain and operate* telegraph lines over the public domain, the military and post-roads and the navigable waters of the United States, all of which, as the Supreme Court has said, are within the domain of the national powers and "*are, therefore, subject to legitimate congressional regu-* "*lation.*" The act is, therefore, an express grant of telegraphic *franchises* on all the post-roads of the United States to the companies acting under its provisions.

It confers not merely the right to construct their lines over and along the post-roads of the United States, but the right also to *maintain and operate* those lines over and along those roads, and the act is therefore a grant of the franchise of carrying on the telegraph business on, over and by means of those roads; as much so as if Congress had directly incorporated the companies and expressly authorized them to prosecute their business as telegraph companies over and along the post-roads of the United States.

This grant, as we have said, is founded upon a *valuable consideration*, which is perpetually enuring to the benefit of the Government.

That consideration arises out of the obligation imposed upon the companies acting under the act to perform the telegraph service of the Government at rates fixed by the Postmaster, which is a very onerous obligation, as the rates have been reduced by the Postmaster-General from time to time under the provisions of the act until Government messages are transmitted at an absolute loss to the telegraph companies. The Government service, including meteorological reports, require the preferential use several times per day of over 30,000 miles of wire, and all Government messages have precedence over all other business, as stipulated in the act. This very exacting service is required to be performed at rates of toll below the average cost to the companies of handling their entire business (The Government and the Telegraph, "North American Review," Nov., 1883).

All that the companies have practically received from the United States in return for this service is the right to construct and operate their lines over the post-roads of the United States, and that right was thus, in effect, *purchased* by the companies by means of the obligations which they assumed when they accepted the provisions of the Act of 1866.

5. The Supreme Court has declared the nature, purpose and policy of the Telegraph Act of 1866, and given effect to it in a manner that should silence all

doubt as to its operation in respect to the subject matter of this' controversy.

> Pensacola Telegraph Co. vs. Western Union Telegraph Co., 96 U. S., 1.
>
> W. U. Telegraph Co. vs. Texas, 105 U. S., 460, and subsequent cases referred to in the briefs of the telegraph company.

In the former case the Court decided that the Act of 1866 was not limited in its operation to such military or post roads as are upon the public domain; that it extended to railroads within the States as post-roads of the United States, and that it struck down and nullified all State legislation which interfered with the right given by that act to companies acting under it to construct their lines within the State over such post-roads.

Chief-Justice WAITE, speaking for the Court, said:

"The electric telegraph marks an epoch in the progress of time. In a little more than a quarter of a century it has changed the habits of business and become one of the necessities of commerce. It is indispensable as a means of intercommunication, but especially is it so in commercial transactions. The statistics of the business before the recent reduction in rates show that more than eighty per cent. of all the messages sent by telegraph related to commerce. Goods are sold and money paid upon telegraphic orders. Contracts are made by telegraphic correspondence, cargoes secured the and movements of ships directed. The telegraphic announcement of the markets abroad regulates prices at home, and a prudent merchant rarely enters upon an important transaction without using the telegraph freely to secure information.

"It is not only important to the people, but to the Government. By means of it the heads of the departments in Washington are kept in close communication with all their various agencies at home and abroad, and can know at almost any hour, by inquiry, what is transpiring everywhere that affects the interests they have in charge. Under such circumstances it cannot for a moment be doubted that this powerful agency of commerce and intercommunication comes within the controlling power of Congress, certainly as against hostile State legislation.

"The statute of July 24, 1866, in effect, amounts to a prohibition of all State monopolies in this particular. It substantially declares, in the interest of commerce and the convenient transmission of intelligence from place to place by the Government of the United States and its citizens, that *the erection of telegraph lines shall, so far as State interference is concerned, be free to all who will submit to the conditions imposed by Congress,* and that corporations organized under the laws of one State for constructing and operating telegraph lines shall not be excluded by another from prosecuting their business within its jurisdiction, *if they accept the terms proposed by the national Government for this national privilege.* To this extent certainly, the statute is a legitimate regulation of commercial intercourse among the States, and is appropriate legislation to carry into execution the powers of Congress over the postal service. It gives no foreign corporation the right to enter upon private property, without the consent of the owner, and erect the necessary structures for its business; but it does provide that, whenever the consent of the owner is obtained, no State legislation shall prevent the occupation of post-roads for telegraph purposes by such corporations as are willing to avail themselves of its privileges.

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"It is insisted, however, that the statute extends only to such military and post-roads as are upon the public domain; but this, we think, is not so. *The language is, 'through and over any portion of the public domain of the United States, over and along any of the military or post-roads of the United States, which have been or may hereafter be declared such by Act of Congress, and over, under or across the navigable streams or waters of the United States.' There is nothing to indicate an intention of limiting the effect of the words employed, and they are, therefore, to be given their natural and ordinary signification.* Read in this way, the grant evidently extends to the public domain, the military and post-roads, and the navigable waters of the United States. These are all within the dominion of the national powers, and are, therefore, subject to legitimate Congressional regulation."

In the case of *The Western Union Telegraph Company vs. Texas* (105 U. S., 460), the Supreme Court decided:

> "1. In respect to its foreign and inter-State business, a telegraph company is, as an instrument of commerce, subject to the regulating power of Congress; and if it accepts the provisions of Title 65 of the Revised Statutes, it becomes an agent of the United States, so far as the business of the Government is concerned.
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> "2. When it has accepted those provisions, State laws, so far as they impose upon it a specific tax on each message which it transmits beyond the State, or which an officer of the United States sends over its lines on public business, are unconstitutional."

Chief-Justice WAITE, in that case, said:

> "In *Pensacola Telegraph Co. vs. Western Union Telegraph Co.* (96 U. S., 1), this Court held that the telegraph was an instrument of commerce, and that telegraph companies were subject to the regulating power of Congress in respect to their foreign and interstate business. A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways, and their liabilities are in some respects different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits.
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> "Congress, to facilitate the erection of telegraph lines, has by statute authorized the use of the public domain and the military and post-roads, and the crossing of navigable streams and waters of the United States for that purpose. *As a return for this privilege those who avail themselves of it are bound to give the United States precedence in the use of their lines for public business at rates to be fixed by the Postmaster-General.* Thus, as to Government business, companies of this class become Government agencies."

The other cases to like effect will be found referred to in the briefs in this case and in No. 662, The Western Telegraph Company vs. Taggart, at the present term. See particularly, also, the opinion of HARLAN, J., in the recent case decided at the present term (October Term, 1895) in the case of the United States vs. Union Pacific Ry. Co. and the Western Union Tel. Co., as to the purpose and effect of the Act of July 24, 1866.

APPENDIX NO. II.

Being the Argument in Western Union Telegraph Company, Plaintiff in Error, vs. Thomas Taggart, Auditor, &c., No. 662, Referred to in the Foregoing Brief.

Supreme Court of the United States.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error, vs. THOMAS TAGGART, as Auditor of Marion County, Indiana, and others.	No. 662.

Additional Brief of Plaintiff in Error.

A careful statement of the case is made in the brief of Mr. ALPHEUS H. SNOW, also of counsel for the plaintiff in error, to which we refer. It is not necessary for us to make another statement of the facts. That brief contains a thorough discussion of many of the points arising in the case. The present brief is intended to present certain aspects of the case, which we deem important, under three distinct propositions. The other questions we leave upon the discussion contained in the brief of Mr. SNOW, and have not deemed it necessary to repeat the arguments therein set forth.

The plaintiff in error in this case contests the validity of taxes assessed against it under the act passed by the General Assembly of the State of Indiana, approved March 6, 1893, and entitled "An Act supplementary to and amendatory of an act entitled 'An Act 'concerning taxation, repealing all laws in conflict 'therewith and declaring an emergency,' approved "March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-"room car, dining car, express and fast freight joint "stock associations, companies, copartnerships and "corporations transacting business in the State of Indiana, repealing sections 68, 69, 70 and 71 of said Act, "and all laws in conflict therewith and declaring an "emergency."

The Act of March 6, 1891, is the act which, in its application to the taxation of railway companies, was considered by this Court in the cases of *Railway Company vs. Backus*, reported in 154 United States. The Act of March 6, 1893, by Section 1, requires every joint-stock association, company, copartnership or corporation, whether incorporated under the laws of Indiana or of any other State, engaged in transmitting telegraphic messages from, through or across the State of Indiana, to make out annually, between the first day of April and the first day of June, and deliver to the Auditor of the State, a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing: the capital stock of such company; the number of shares of capital stock issued or outstanding, the par or face value of each share; the market value of said shares of stock on the first day of April next preceding; and, if such shares have no market value, then the actual value thereof; the real estate owned by such company and subject to taxation within the State; the real estate, together with permanent improvements thereon, situate outside the State of Indiana and not directly used in the conduct of the business; all mortgages upon the whole or any of its property, together with the dates and amounts thereof; the total length of the lines of said company and the total length of so much of the lines as is outside of the State of Indiana; and, the length of the lines within each of the counties and townships within the State of Indiana. By Section 6 it is further provided that, upon the meeting of the State Board of Tax Commissioners, the Auditor of the State shall lay such statements, with such information as may have been furnished him, before the Board of Tax Commissioners, who shall thereupon value and assess the property of each company in the manner set forth in a later portion of the statute, after examining such statements and after ascertaining the value of such properties therefrom and from such other information as they may have or obtain. For that purpose, they may require the officers or agents of the company to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses in case they shall deem it necessary to enable them to ascertain the true cash value of such property.

Section 7, which prescribes the method of valuation, is as follows:

> "Said State Board of Tax Commissioners shall first ascertain the true cash valuation of the entire property owned by said association, company, copartnership or corporation from said statements or otherwise, for that purpose taking the aggregate value of all the shares of capital stock, in case said shares have a market value, and in case they have none, taking the actual value thereof, or of the capital of said association, company, copartnership or corporation, in whatever manner the

same is divided, in case no shares of capital stock have been issued: *Provided, however,* That in case the whole or any portion of the property of such association, company, copartnership or corporation, shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital, in case there shall be no such shares, the aggregate amount of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation. Such Board of Tax Commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain, from such statements or otherwise, the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situate without the State of Indiana, and not specifically used in the general business of such associations, companies, copartnerships or corporations, which said assessed values for taxation shall be by said Board deducted from the gross value of the property as above ascertained. Said State Board of Tax Commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnership or corporations within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of the lines of said associations, companies, copartnerships or corporations, in the case of telegraph and telephone companies within the State of Indiana, bears to the total length of the lines thereof; and in the case of palace, drawing-room, sleeping, dining or chair car companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the State, over which said cars are run, bears to the length of the whole lines over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions, which the length of the lines or routes within the State of Indiana bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the State of Indiana.

"From the entire value of the property within the State so ascertained there shall be deducted by said Board the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as hereinbefore described in item No. 5 of sections 1, 2, 3 and 4 of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said Board assessed to said association."

The method described in the statute, it is averred in the bill, was followed, and the methods of making the assessment, which are admitted by the demurrer, are alleged to have been as follows (Record, p. 12):

"That, in making said assessment, said State Board of Tax Commissioners assumed to take as the basis thereof the value of the entire capital stock of complainant at a valuation per share based upon the price of the shares of complainant's capital stock dealt in in the stock exchange market of New York City, dividing such aggregate value by the total number of miles of telegraph line of complainant wherever situated and both in and outside of Indiana, and thereby obtaining a pretended valuation per mile of the telegraph line of complainant, amounting to the said sum of three hundred and fifty-seven dollars ($357.00) per mile, which said pretended valuation per mile said Board, acting under the authority of said pretended statute, imputed to and imposed upon each mile and the whole number of miles of complainant's telegraph line in Indiana, thereby imputing to and imposing upon the whole telegraph line of complainant in Indiana, which is of the length of six thousand four hundred and thirty-six (6,436) miles, said valuation of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00), which said pretended valuation is grossly excessive and far beyond the true cash value of complainant's said property in Indiana."

"That said State Board of Tax Commissioners, in reaching said valuation of complainant's said property in Indiana, did not consider and assess the value of the property of complainant situated in Indiana otherwise than by pursuing the requirements of said pretended statute."

And further (Record, p. 14):

"That any price at which any or all shares of complainant might be sold by any holder or holders thereof, whether such price be calculated upon any market value or upon actual value, includes, amongst other things, a consideration of franchises of great value owned or exercised by complainant, granted by the State of New York, by the United States, by Canada, by Great Britain, by Cuba, and by other States, countries and municipalities; a consideration of complainant's good-will, its past earnings from every source, its probable future earnings from every source; the business ability, enterprise and skill of the present managers of complainant's business; the contract and other relations of complainant to powerful railroad, telephone and cable companies; a consideration of the real estate of complainant situated in the City of New York, which is of great value, to wit, of the value of three million five hundred thousand dollars ($3,500,000), and in the City of Chicago, which is of great value, to wit, of the value of one million seven hundred thousand dollars ($1,700,000), and of the real estate of complainant of great value situated in many other States and countries, none of which is situated in the State of Indiana; as well as the consideration of the actual value of all complainant's telegraph lines, poles, wires, cables, conduits, instruments, appliances and office furniture, including that which is situated in Indiana and taxable by the State of Indiana.

"That in estimating such market or actual value of the shares of the stock of complainant the value of said intangible franchises, rights, contracts, earnings, business, business ability, enterprise, skill and management and good-will, and of all said real and personal estate of complainant, are blended so as to render it impossible to separate and distinguish the portions of value applicable to any or each of said elements of value of said shares.

"That complainant is the owner of many thousands of miles of telegraph in the States of Massachusetts, New York, Pennsylvania and New Jersey, and in other densely populated portions of the United States, which by reason of density of population, the great amount and extra quality and strength of wire and poles, the necessary use of underground conduits and cables, are of great cost and value, to wit, of the cost and value of two thousand, and five hundred dollars ($2,500) per mile on the average and require great expenditures for the maintenance thereof.

"That complainant is the owner of many thousand miles of cable which lie under the high seas, which are of great cost and value, to wit, of the cost and value of three thousand five hundred dollars ($3,500) per mile on the average.

"That complainant is the owner of many thousands of miles of lines of telegraph in uninhabited or sparsely inhabited portions of the United States and Mexico, where there are little or no transportation facilities, which said lines, by reason of the great cost of transportation of material and cost of maintenance are of great cost and value.

"That all complainant's lines in the State of Indiana are under substantially the same conditions as to the cost of construction and maintenance, and that, by reason of the proximity to supplies and material, and the very cheap transportation, complainant is able to and has constructed and maintained, and does construct and maintain, its said lines of telegraph at the minimum cost, and that complainant's said telegraph lines in Indiana are of minimum value as compared with the lines of complainant situated elsewhere;

"That by reason of the facts aforesaid the telegraph lines of complainant, located outside of the State of Indiana, are to such a large extent more costly and valuable than the telegraph lines of complainant within Indiana that the average mile of the telegraph line of complainant within Indiana is of the value of, to wit: forty (40) per cent. of the value of the average mile of the whole telegraph line of complainant situated outside of the State of Indiana, reckoning such value upon the cost of construction and maintenance, and making allowance for deterioration;

"That a very large portion, to wit: sixty-six (66) per cent. of all the business done by complainant in its conveyance of telegraphic messages as aforesaid, is interstate and international business;

"That a large portion, to wit: sixty (60) per cent. of all the business done by complainant within the State of Indiana is interstate and international business;

"That the average net earnings of a mile of complainant's said telegraph line in Indiana amount to only a part, to wit: sixty (60) per cent. of the net earnings of the average mile of complainant's telegraph line outside of the State of Indiana."

The contention of the plaintiff in error in this case is that the action of the assessing officers was violative of its rights as secured to it by the Constitution of the United States; (1) that there was a taxation, in the method adopted by the Board of Tax Commissioners, and prescribed by the statute in question, of the values of Federal franchises conferred upon it; (2) that the method adopted necessarily involved the taxation of property not within the limits of the State of Indiana; (3) The mode prescribed or allowed by Section 7 of the Indiana Act of March 9, 1893, to wit, the market value, &c., of shares, for ascertaining the true cash valuation of the entire property of the corporation, is a mode under which it is legally impossible that it should result in ascertaining the true cash value of the property of the plaintiff in error within the State of Indiana, and, therefore, the assessment upon the plaintiff in error is in violation of the commerce clause of the Constitution and of the Fourteenth Amendment.

The contention of the defendant in error is that the questions involved in this suit are all determined by the prior decisions of this Court in the cases of Railway vs. Backus, 154 U. S., 421, 439, which contention we deny.

I.

In the method of valuation presribed by the statute and in the assessment now in question actually made by the Board of Assessors pursuant to the statute there was necessarily included a valuation of the Federal franchises of the plaintiff in error, which Federal franchises, or the value thereof, are not taxable by the State of Indiana.

The allegations of the bill are that the plaintiff in error in 1867 duly accepted the provisions of the Act of Congress of July 24, 1866, (now Sections 5263 to 5269 of the Revised Statutes of the United States); that all the telegraph lines in the State of Indiana which complainant owns, leases or operates are erected and constructed upon the railroads, streets, and other post-roads of the United States; that by virtue thereof complainant is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana, and from or to points without the State of Indiana, to or from points within the State of Indiana, for the Government of the United States, and for citizens thereof (Record, p. 16). The acceptance by the plaintiff in error of the provisions of the Act of Congress above referred to made it a Federal agency and conferred upon it a Federal franchise (Western Union Telegraph Co. vs. Pensacola Telegraph Co., 96 U. S., 1).

The text of this important act and its legislative history will be found in the APPENDIX to our brief in the case of *Fishback vs. The Western Union Tel. Co.*, being No. 341 on the docket of the present term of this Court.

This Federal franchise thus conferred was not one which was subject to taxation by the States. If in the assessment of the property of the plaintiff in error for taxation, there was a blending of the value of this Federal franchise with the property of the company, and a taxation upon the value thus fixed, the whole assessment is void and cannot be sustained (California vs. Pacific R. R. Co., 127 U. S., 1). In the light of the averments of the complaint, which are expressly admitted by the demurrer of the defendant in error, it is difficult to see how it can fairly be argued that in the method of assessment adopted in this case there was not included a valuation of the franchise which the plaintiff in error received from the Government of the United States. The distinct averment is (Record, p. 12) that in making the assessment the State Board of Tax Commissioners assumed to take as the basis thereof the value of the entire capital stock of the plaintiff in error at a valuation per share based upon the price of shares of said plaintiff's capital stock dealt in in the Stock Exchange market of New York, and divided such aggregate value by the total number of miles of telegraph lines of the plaintiff wherever situate, both within and without the State of Indiana, and thereby obtained a pretended valuation per mile of the telegraph lines of the plaintiff in error, and then taking the number of miles of telegraph line in Indiana and multiplying it by the value per mile as thus obtained and thereby obtained a pretended valuation for which the plaintiff in error was assessed. Apart from the specific allegations in the bill referred to hereafter that the valuation now in question did actually include the value of the Federal and other franchises of the plaintiff, such a method of determining the value of the property of plaintiff in error in Indiana would necessarily involve an estimated addition to the value of all the property of the telegraph company of all the franchises owned by it, whether from the Federal Government, or from the several States.

In the earlier cases in the Supreme Court where the mileage basis was first used for the purpose of apportionment of values of a unit property lying in several States it was expressly admitted in the opinions that the valuations or assessments were based on the market value of the stock, and necessarily included, among other things, the value of the franchises as well as of the property; but in those cases it was competent for the State to provide for the taxation of franchises as well as property; and hence the question which we now make did not arise and was not presented or decided. The first case upon the subject, the Delaware Railroad Tax, 18 Wall., 206, it is clearly implied, in the opinion in the case, that in the mileage basis of apportionment the value of the franchise would be necessarily included, but that it was entirely proper to thus apportion between the several States the values of both property and franchise; the reason therefor being that each of the three States in question, involved in the case, had conferred franchises upon the Philadelphia, Wilmington and Baltimore Railroad Company, and, therefore, each of the States was entitled to tax not only the property, but the franchises within the State. The concluding paragraphs of the opinion very clearly show such to have been the view of the Court:

> "The tax imposed by the act in question affects commerce among the States and impedes the transit of persons and property from one State to another just in the same way and in no other that taxation in the county necessarily increases the expenses attendant upon the use or possession of the thing taxed. That taxation produces this result of itself constitutes no objection to its constitutionality. As was very justly observed by this Court in a recent case, every tax upon personal property or upon occupation, business, or franchises, affects more or less the status and the profits of commerce; yet it is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution."
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> "The exercise of the authority which every State possesses to tax its corporations and all their property, real and personal, and their franchises, and to graduate the tax upon the corporations according to their business or income, or the value of their property, when this is not done by discriminating against rights held in other States, and the tax is not on imports, exports or tonnage, or transportation to other States, cannot be regarded as conflicting with any constitutional power of Congress."

In the next case in which this question arose the *State Railroad Tax Cases*, 92 U. S., 575, a statute of Illinois provided for a valuation upon the basis of the market value of the shares of the stock, and it is very clear that the Court, in passing upon this valuation, considered that the value of the franchises of the com- would necessarily be included in the value which would be fixed by the method adopted in that case, which was substantially the method adopted in the case at bar. No legal objection in that case could be made to the valuation of the franchise, for the reason that the corporation was a domestic corporation and the property was situated wholly within the taxing State. The rule adopted by the Board of Assessors in that case is stated in the opinion, page 604, to have been as follows :

> "First, the market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses) shall be combined or added together, and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchises respectively of such companies and associations."

Respecting this rule Mr. Justice MILLER, proceeding with the opinion, remarks :

> "It may be assumed for all practical purposes and it is perhaps absolutely true that every railroad company in Illinois has a bonded indebtedness secured by one or more mortgages. The parties who deal in such bonds are generally keen, far-sighted men, and most careful in their investments. Hence the value which these securities hold in the market is one of the truest *criteria*, as far as it goes, of the value of the road as a security for the payment of those bonds. These mortgages are, however, liens on the road, and taking precedence of the shares of the stockholder, may or may not extinguish the value of his shares. They must in any event affect that value to the exact amount of the aggregate debts. For all that goes to pay that debt, and its interest diminishes *pro tanto* the dividend of the shareholder and the value of his share.
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> "It is, therefore, obvious that, when you have ascertained the current cash value of the entire number of shares you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock and its franchises ; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

The force and effect of these decisions as to what is necessarily included in a method of valuation, which takes as it does the market value of the share capital and adds to it the mortgage indebtedness, as in the case at bar, is in no wise modified by the subsequent cases of the *Telegraph Company vs. Massachusetts*, 125 U. S., and 141 U. S., because in those cases the Court expressly put their decision upon the ground that this is a method for the distribution of the value of the property as between the several States, and, there being nothing in the cases to show that such valuation was unfair, the Court refused to disturb the valuation so made.

The question of the valuation of the franchises is not considered in these cases at all.

This precise question was also very carefully considered by the Court of Appeals of the State of New York in the case of *People ex rel. U. T. Co. vs. Michael Coleman et al.*, 126 N. Y., 433. The section of the New York statute under which the estimate involved in this cause was made, reads as follows :

> " The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or shall have been exempted by law, together with its surplus profits or reserve funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all the shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value in the same manner as the other real and personal estate of the county."

The Union Trust Co. had a large surplus, and its shares were sold in the market in consequence at a very large percentage above par. The Commissioners, in order to assess the capital stock of this corporation, took the market value of the shares and multiplied the nominal capital by the market price of these shares, and deducted therefrom ten per cent. of the nominal capital (required to be deducted by the statute), the assessed value of the real estate and the investments in United States securities. The Court of Appeals held that this was error, because it necessarily involved a taxation of the franchises of the company, which, under the statute, they had no right to do. The discussion of this question by Judge **Finch** is quite clear and concise. At page 437, he says:

> "The capital stock of the company is one thing; that of the shareholders is another and a different. That of the company is simply its capital existing in money or property, or both, while that of the shareholders is representative, not merely of that existing and tangible capital, but also of surplus, of dividend-earning power, of franchise and the good-will of an established and prosperous business. The capital stock of the company is owned and held by the company in its corporate character; the capital stock of the shareholders they own and hold in different proportions as individuals. The one belongs to the corporation; the other to the corporators. The franchise of the company, which may be deemed its business opportunity and capacity, is the property of the corporation, but constitutes no part or element of its capital stock, while the same franchise does enter into and form part, and a very essential part, of the shareholders' capital stock. While the nominal or par value of the capital stock and of the share stock are the same, the actual value is often widely different. The capital stock of the company may be wholly in cash or in property or both, which may be counted and valued. It may have in addition a surplus consisting of some accumulated and reserved fund or of undivided profits, or both, but that surplus is no part of the company's capital stock, and, therefore, is not itself capital stock. The capital cannot be divided and distributed; the surplus may be. But that surplus does enter into and form part of the share stock, for that represents and absorbs into its own value surplus as well as capital and the franchises in addition. So that the property of every company may consist of three separate and distinct things which are its capital stock, its surplus, its franchise; but these three things, several in the ownership of the company, are united in the ownership of the shareholders."

This case was followed by the later case of *People ex rel. Railway Company vs. Edward P. Barker et al., Commissioners of Taxes*, 146 N. Y., 304, decided June

11, 1895. In this case the statute prescribing the method of assessing the capital stock of the railway company required that the actual value of its capital stock should be fixed and the assessors took the market value of the shares. This was held to be erroneous for the reason that it necessarily included the value of the franchises of the company. Upon this subject HAIGHT, J., says (p. 313):

> "Again, the method presented by respondents involves the presumption that the indebtedness of the corporation represents property to the amount of such indebtedness in addition to that represented by its capital stock. This presumption cannot be indulged. The indebtedness may have been incurred for operating expenses, wages of employees and material used up. It may represent property worn out, decayed or burned up during the existence of the corporation. Presumptions that arise from the earnings of a corporation and those that arise from its indebtedness are quite different. Too many of the railroads of the country are in the hands of Receivers to warrant a judicial presumption that the bonded or other indebtedness of each road represents its actual tangible property in addition to that represented by its capital stock.
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> **"And, again, the method proposed necessarily includes the value of the franchises possessed by the corporation, which, as we have seen, cannot properly be included in the assessment under review."**

But, upon the record in this case, we contend that it is not open to the defendant in error to question the fact that, by taking the market value of the shares of its stock the franchises in question were necessarily included as a part of the valuation of the property of the plaintiff in error by the State Board of Tax Commissioners, because (Record, pp. 14 and 15) the distinct averment is made that the prices at which the shares of stock were sold upon the Stock Exchange of necessity involved "a consideration of franchises of great value owned or exercised by it, granted by the State of New York, by the United States, by Canada, by Great Britain, by Cuba, and by other States, countries and municipalities, together with real estate interests outside of the State of Indiana."

It is further averred that the actual value of the shares of stock of the plaintiff in error which formed the basis of the State Board of Tax Commissioners' valuation of the plaintiff in error's property necessarily involved and did actually include the values of said intangible franchises, rights, contracts, earnings, enterprise, skill, good-will, together with its real and personal estate, and that all these were so blended that it was impossible to separate them and attribute to each the value which it was entitled to receive in making up the value of the shares as taken by the Tax Commissioners for the ascertainment of the value of the property of the plaintiff in error (Record, p. 15). These elements of value and these allegations of fact with respect to the valuation, being expressly admitted by the demurrer, it is evident that there is involved in this case material elements which were not present in any of the previous cases which have been before the Court, and which are so confidently appealed to by the defendant in error in support of his contention as to the rightfulness of this tax.

In the case of *California vs. Pacific R. R. Co.*, 127 U. S. 1, the State Board of Equalization of California assumed to tax the property of the Central Pacific R. R. Co. under a statute of that State very similar to the statute in the State of Indiana. One of the sections of the act under which the State Board of Equalization of California proceeded, provided that all taxable property should be assessed at its full cash value, and in order that the railway company's property should be properly valued it was required to make a report, as in the case at bar, of its whole number of miles of railway in the State; and, when the line is partly out of the State, the whole number of miles without the State, and the whole number within the State; the value of the roadbed, roadway and rails of the whole railway, and the value of the same within the State; the amount of rolling stock and its value; the gross earnings of the entire road; the gross earnings in the State; and, if the road were rented, how much was derived as rental; the cost of operating the entire road; net income for the year; amount of dividends declared; capital stock authorized; capital stock paid in; the number of shares authorized, and the number of shares issued. The State Board was required, after making the assessment, to apportion the same to the counties or cities and counties in which the railway was located in proportion to the number of miles of road in such cities and counties. The statute did not, as in the case at bar, require the board to value the entire line within and without the State and then apportion the proportion within the State on the ratio which it bore to the whole line, but that would not make any difference in the principle which we are now considering. They were required to apportion within the State in proportion to mileage, and the sole difference between the act in California and the act which we are considering was that they were expressly required to include the value of the franchise. It is not a difference in reality, for, while in the Indiana act they are not *expressly* required to include the value of the Federal and other franchises of the telegraph company, the rule prescribed by the statute (which it is alleged and admitted of record they followed in making the assessment now in question), necessarily includes the value of such franchises. Under the California act the question arose, inasmuch as the Central Pacific had received franchises from the Federal Government, whether the value thus ascertained, which included an assessment of the franchise which had been received from the United States, was one that rendered the assessment void. Upon that point this Court says :

> "Assuming then that the Central Pacific Railroad Company has received the important franchises referred to by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the company for national purposes and to subserve national ends. **It seems very clear that the State of California can neither take them away, nor destroy nor abridge them, nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible property of the company, situated within the State. That is a different thing. But may it tax franchises which are the grant of the United States? In our judgment it cannot.** What is a franchise? Under the English law Blackstone defines it as 'a royal privilege, or branch of the king's prerogative subsisting in the hands of a subject' (2 Bl. Com., 37). Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system their existence and disposal are

under the control of the legislative department of the government and they cannot be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. No private person can take another's property, even for a public use, without such authority; which is the same as to say that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. The list might be continued indefinitely.

"In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden and may be laid so heavily as to destroy the thing taxed or render it valueless. As Chief-Justice MARSHALL said in *McCulloch vs. Maryland*, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from and is a portion of the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the government, and repugnant to its paramount soveriegnty. It is unnecessary to cite cases on this subject. The principles laid down by this Court in *McCulloch vs. Maryland*, 4 Wheat., 316; *Osborn vs. The Bank of the United States*, 9 Wheat., 738, and *Brown vs. Maryland*, 12 Wheat., 419, and in numerous cases since which have followed in their lead, abundantly sustain the views we have expressed. It may be added that these views are not in conflict with the decisions of this Court in *Thomson vs. Pacific Railroad*, 9 Wall., 579, and *Railroad Co. vs. Peniston*, 18 Wall., 5. As explained in the opinion of the Court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations (18 Wall., 35, 37).

"The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the Legislature may choose. Or without any valuation at all the tax may be arbitrarily laid. It is not an idle objection, therefore, made by the company against the tax imposed in the present cases."

This element which we have just been considering was not present in either of the cases of *Railway Co. vs. Backus* in 154 U. S., and therefore those cases are in no way authorities in point. Not only was the element of Federal franchise not presented in those cases, but could not be, since they were domestic corporations of the State of Indiana; and, under the doctrine of the *Delaware Tax Case*, 18 Wall., and *Illinois State Railroad Tax Cases*, 92 U. S., the State of Indiana had the right to include such franchises in the valuation, and tax them. Neither has this question been before the Court for consideration in any of the previous cases which have been brought here by the telegraph company. A careful examination of the previous decisions of the Court makes it clear that the precise question involved in this case has not yet been passed upon.

In the case of *The Western Union Telegraph Co. vs. Massachusetts*, 125 U. S., 530, the State of Massachusetts ascertained the amount of property in the State upon the mileage basis, but in that case there was nothing to show that the valuation thus fixed included the value of the Federal franchise or that the amount fixed in that manner did injustice to the telegraph company by any overvaluation of the property. In the opinion, at page

552, this is made very plain, where Mr. Justice **Miller** says:

> "The tax in the present case, though nominally upon shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their length throughout the whole country is made the basis for ascertaining the value of the property. We do not think that such a tax is forbidden by the acceptance on the part of the telegraph company of the rights conferred by Section 5263 of the Revised Statutes, or by the commerce clause of the Constitution."

It is to be noted that there was no such question made in that case as is made by the bill in this case, viz., that the result of the valuation upon that basis was to include in the values upon which taxes were assessed the franchises obtained from the United States and from other States than the State in which the tax was sought to be levied. It is clear, from the opinion, that the tax was sustained solely upon the ground that the valuation, as made upon the property of the telegraph company, was not an unjust one. Indeed, the Court, in announcing the decision in that case, is very careful to define the limits of the decision which are, that property engaged in interstate commerce or by an agency of the United States, yet having its situs within the State, is subject to taxation because there situate. When the case again came before the Supreme Court in 141 U. S., 40, the decision of Mr. Justice **Gray** again made it quite clear that all that was allowed by the act of Massachusetts was the taxation of the property within the State of Massachusetts. In the dissenting opinion in the case of *Pullman Car Co. vs. Pennsylvania*, 141 U. S., 34, Mr. Justice **Bradley** thus clearly states the scope and effect of the decision of this Court in the original case in 125 U. S. He says:

> "In that case there was no question as to the situs of the property taxed. It was situated within the State consisting of poles, wires and offices and the general plant for telegraphic purposes. The property belonged in Massachusetts and was consequently taxable there. There was a phase of that case which led some of the Justices of the court to doubt as to the proper decision to be made. The difficulty was this: The tax was in terms made upon a certain proportional part of the capital stock of the company. That proportion was calculated by the number of miles of telegraph within the State as compared with the number of miles of telegraph belonging to the company in the whole country. It was objected that the property of the company situated in Massachusetts had no necessary relation to the said proportion of the capital stock, because the correct value of the stock might depend on the property, franchises and amount of business outside of Massachusetts largely out of proportion to the miles of telegraph outside of that State. But the difficulty of getting at the true value of the property within the State and of adopting any other rule for ascertaining it, *as well as the failue of the company to show that the rule adopted produced any unfair results,* finally induced an acquiescence in the decision; but expressly on the ground that though the tax was nominally on the shares of capital stock of the company, it was in effect a tax upon the property owned and used by it in Massachusetts, the proportional length of the lines in that State to their entire length throughout the whole country being merely used as the basis for ascertaining the value of that property."

Obviously, the decision in the Massachusetts case thus referred to and explained has no application to and certainly does not control the present case. In that case the decision was reached only on the ground that the company had failed to make it appear that the rule adopted produced any unfair result, and the Court acquiesced in the result reached only on the ground that, though the tax was nominally on the shares of the capital of the company, it was in effect a tax on the property owned and used by it in Massachusetts, and it did not appear that this property was taxed beyond its fair value as compared with other property within the State.

The draughtsman who drew the bill of complaint in the case at bar obviously had the failure of the company in the Massachusetts case to show that the assessment was unfair before his eyes, and, therefore, it is in the bill in the present case not only specifically alleged that the result arrived at was an unfair one, but also that the result included the valuation of all the Federal and other franchises held by the company (Record, pp. 12, 15).

We, therefore, distinguish the case at bar from the Massachusetts case on these two grounds :—

1. That in the case at the bar it is expressly averred that the valuation complained of in the bill of complaint did include the value of the Federal and other franchises of the company ; and,

2. That, by so including them, an unfair result was obtained, since the result was to value and assess property of the company in Indiana far beyond its actual and real value under any of the tests which have been suggested by this Court.

The recent case of the *Postal Telegraph Cable Co. vs. Adams*, 155 U. S., 688, in which this Court sustained a tax of Mississippi, which was called a " privilege " tax, and where the tax was a dollar a mile upon each mile of telegraph line used in the State, in cases where the lines did not reach the length of three thousand miles, and where they exceeded that length, the amount of $3,000 was the maximum tax, was decided in favor of the tax not as a license to do interstate business or business within the State, but as a method of fixing the amount of the tax which should be imposed upon the property of the company within the State. An important feature of the case is to be borne in mind, and that is that it appeared that an *ad valorem* tax would have required the payment by the telegraph company upon its property at the same rates as other persons and corporations were required to pay, taxes of about double the amount of the so-called "privilege" tax. This Court sustained the tax, however, solely and distinctly upon the ground that it was a legitimate exercise of the discretion confided in the State Legislatures in fixing a method of determining the values of the properties within the State. At page 700, Mr. Chief-Justice Fuller, delivering the opinion of the Court, says:

> "In the case before us the tax was graduated according to the amount and value of the property measured by miles, and was in lieu of taxes levied directly on the property. In marking the distinction between the power over commerce and municipal power, literal adherence to particular nomenclature should not be allowed to control construction in arriving at the true intention and effect of State legislation. We are of opinion that it was within the power of the State to levy a charge upon this company in the form of a franchise tax, but arrived at with reference to the value of its property within the State and in lieu of all other taxes, and that the exercise of that power by this statute, as expounded by the highest judicial tribunal of the State in the language we have quoted, did not amount to a regulation of interstate commerce, or put an unconstitutional restraint thereon."

The comment above made on the inapplicability of the decision in The Western Union Telegraph Co. vs.

Massachusetts (125 U. S.) equally applies to the case of the Postal Telegraph Co. vs. Adams, just mentioned. The controlling feature of the Adams case was that the method adopted for ascertaining the amount of the tax was a method which did not impose nearly as great a tax upon the property of the company as would have been imposed if the tax had been *ad valorem.* The bill of complaint in the present case, however, shows precisely the reverse of this, viz., that the method adopted by the State of Indiana produced a result greatly in excess of what would have been produced from an assessment of the property of the Western Union Company on an *ad valorem* basis.

If the tax levied by a State is upon a Federal "franchise" it is settled that it is unconstitutional.

McCulloch vs. Maryland, supra.
Osborn vs. The Bank of the U. S., supra.
Brown vs. Maryland, supra.
Weston vs. Charleston, 2 Pet., 449.
California vs. Pacific R. R. Co., 127 U. S., 1.

Nor is the Western Union Telegraph Company, having accepted the Act of Congress of July 24, 1866, subject to have imposed on it a license tax by the State of Indiana.

Le Loup vs. Port of Mobile, 127 U S., 640.
Asher vs. Texas, 128 *Id.,* 129.
W. U. Tel. Co. vs. Alabama Board, 132 *Id.,* 472.
Lyng vs. Michigan, 135 *Id.,* 165.

A State may tax the "*property*" of a corporation having a Federal franchise, but it cannot tax the "Federal franchises" of a corporation.

California vs. Pacific R. R. Co., 127 U. S., 1.

That the Western Union Company accepted the Act of Congress of July 24, 1866, and thus acquired Federal franchises of a valuable character for which it yields to the United States a large consideration and subjects itself to great burdens, is an admitted fact upon the record (Record, p. 16). Union Pacific Ry. Co. vs. United States, decided at the present term; see also, Western Union Tel. Co. vs. Pensacola Tel. Co., 96 U. S., 1.

That the value of this franchise was included by the State of Indiana in the valuation and assessment of the property of the Western Union Telegraph Company in the case at the bar is admitted of record. That such valuation largely exceeded the value of the property of the Western Union Company situate within the State of Indiana is also admitted on the record (Record, p. 12).

The tax in the case at the bar is not a tax merely upon the "property," but includes a tax upon the Federal and other "franchises" of the telegraph company engaged in interstate commerce, which franchises are not derived from the State of Indiana, and are not taxable by it.

If you include in the gross valuation for assessment purposes the value of such franchises (which in this case it is admitted of record was done), can it be said that such franchises are not taxed? If such a doctrine be established by this Court, it arms the States with the power to destroy the instrumentalities of interstate commerce, and they will exercise it as they have already begun to do without scruple and without limit.

Suppose it was admitted in this case that the assessment was made up as follows:

Value of property in Indiana not including the Federal franchise, $1,500,000. Value of the Federal franchise, $797,652; will it be claimed that the value, of the Federal franchise is taxable by the State of Indiana?

Clearly such a tax on the Federal franchise of the Western Union Company would be void. Is it any less invalid by being (as in this case) included in a general assessment in which the value of the "franchises" and of the "property" of the company are combined.

None of the cases cited by the Attorney-General of Indiana so hold.

Such a holding is in conflict with the decisions or the principle of the decisions of this Court in the following cases:

McCulloch vs. Maryland, *supra.*
Weston vs. Charleston, *supra.*
Osborne vs. Bank of U. S., *supra.*
Murray vs. Charleston, 96 U. S., 432.
California vs. Pacific R. R. Co. (127 U. S.).
Bank of Commerce vs. New York York City, 2 Black, 620.
Bank Tax Case, 2 Wall., 200.

The cases of *McCulloch*, *Weston*, *Osborne* and *Murray*, above cited, are so well known and so familiar to the Court that we deem it unnecessary to do more than to refer to them. The case of *California vs. Pacific R. R. Co.* (127 U. S.) has been referred to and quoted from above, and decides the express point that the Federal franchise is not subject to taxation by the State, and that an assessment indistinguishably involving the value of the Federal franchise with other property of the company renders the whole assessment void. The cases of the *Bank of Commerce vs. New York City*, and the *Bank Tax Case*, above cited, cover specifically the point which we are now urging, viz., that the assessment in the case at bar is void because it included the value of the Federal and other franchises of the plaintiff in error. In the case of the *Bank of Commerce vs. New York City*, *supra*, it appeared that the Bank of Commerce had capital invested in the bonds of the United States, which, under an Act of Congress, were exempt from State taxation. The statute in New York in that case did not attempt to levy any tax upon the United States bonds held by the bank, but authorized a tax upon the capital of the bank, which was valued regardless of the form of investment. The Court (NELSON, J., 2 Black, 628) says:

> "The capital of the bank is taxed under the existing laws in that State (New York) upon valuation like the property of individual citizens. * * * It is agreed that the tax is upon the property constituting the capital."

After referring to the case of *Weston vs. Charleston*, Justice NELSON says:

> "It has been argued, however, that the former mode of levying the tax under ordinance of the City of Charleston was different from that of the law of New York, and hence may well distinguish the case in its principles from the present one. This difference consists in the circumstance that the tax in the former case (the Weston case) was imposed on the stock *eo nomine*, whereas in the present case it is taxed in the aggregate of the taxpayer's property to be valued at its real worth in the same manner as all other items of his taxable property. The stock is not taxed by name. No discrimination is made in favor of or against it, but it is regarded like any other security of money or chose in action."

After reviewing the case of Weston (cited *supra*), the Court says (p. 631):

"We cannot, therefore, yield our assent to the soundness of the distinction taken by the counsel between this case and the one referred to."

After this decision in second Black, the Legislature of New York passed another statute, which enacted

"that all banks, banking associations, &c., shall be liable to taxation on a valuation equal to the amount of their capital stock paid in or secured to be paid in and all surplus earnings, &c., in the manner now provided by law."

Under this act a tax was levied by the Tax Commissioners of New York the validity of which was brought in question in the *Bank Tax Case* (2 Wall., 200), and this Court held that the tax laid by a State on banks on a valuation "equal to the amount of their capital "stock paid in or secured to be paid in" was a tax on the property of the institution, and that where the property consists of the stocks of the Federal Government the law laying such tax is void.

Observe that in neither of these cases was there any tax laid *eo nomine* on the bonds or stocks of the United States, but only on the capital stock of the bank in the one case, and in the other case on a valuation "equal to the amount of the capital stock paid in "or secured to be paid in," in both of which cases, however, this Court held that that was in effect a tax upon the stock and bonds of the United States owned by the banks and void. So, here, a tax levied upon the value of the capital stock which is made up of the combined value of the property and the Federal franchises is really a tax upon the Federal franchises, and must likewise be held to be void.

II.

The necessary effect of the method of taxation adopted by the taxing authorities of Indiana in this case was to bring within the operation of the statute of Indiana property, or the value of property, of the telegraph company outside of the State of Indiana. Such taxation cannot be deemed due process of law under the Fourteenth Amendment to the Constitution of the United States; and, therefore, the statute requiring or permitting such a mode of assessment, and the assessment made under it must be treated as unconstitutional and void.

It will be assumed for the purposes of this argument that the State of Indiana is entitled to tax all property within its borders upon the same rule and to the same extent, whether belonging to a foreign corporation, or to an agency of the United States Government, or to a domestic corporation, or an individual. The decisions of this Court have thoroughly settled that proposition, and the plaintiff in error in this case has no disposition to question their conclusiveness or validity. It does contend, however, under the undisputed facts in this case, that the method required by the statute of Indiana as applied to the subject matter of this suit, resulted in subjecting to the taxing power of the State of Indiana property, or the value of property, which did not have its *situs* within the State of Indiana, and therefore was not in any respect subject to the jurisdiction of that State. It is conceded that it was proper to value the property in the State of Indiana with reference to its use as a part of a general or integral system of telegraph lines covering the entire country, but the allegations of facts the bill (admitted to be true by the demurrer) make it plain that all the tests given in previous cases relating to taxation in this Court show conclusively that the value of the line in Indiana was not equal to the value of an average mile of the telegraph company's system. *First*, its original cost was less than that of the average mile; *second*, the value of the use of the same was much less. The allegations of the bill show that the original cost of said lines in the State of Indiana does not exceed 40 per cent. of the cost of the average mile of the whole telegraph system situated outside of the State of Indiana; that two-thirds of the business done over said lines is interstate and international business, and that 60 per cent. of all the business done within the State of Indiana is the same class of business, and that the average net earnings of a mile of the telegraph line of plaintiff in error in the State of Indiana is only 60 per cent. of the net earnings of the average mile of telegraph line outside of the State of Indiana (Record, pp. 15, 16, 39, 40, 41). These allegations are allegations of specific facts and they are admitted by the demurrer, and, therefore, in taking the basis required or permitted by the statute of Indiana, viz., the value of the entire share capital of the Western Union, and dividing it by the number of miles of the entire system, and thus obtaining an average mileage value and imputing that value to each and every mile of the plaintiff in error's telegraph line within the State of Indiana, (which it is admitted on the record the Tax Commissioners did, Record,

p. 12), the taxing authorities of the State imported into Indiana, or taxed in Indiana, values of property wholly outside of the State of Indiana. To test the question, it is only necessary to suppose the earnings of the line throughout the system of the plaintiff in error to average per mile the same as in the State of Indiana, to wit, 60 per cent. of the present earnings, and then undertake to reach a valuation of the share capital. Under such conditions, it needs no argument to demonstrate that the market value of the share capital would be very much less than that assumed as the basis of the valuation by the taxing authorities of the State. The reason for this would plainly be the diminished value of the use of the lines in the States and Counties outside of Indiana, which is only another mode of stating that those lines are of less value than they are. If on the other hand the earnings in the State of Indiana were equal to the earnings in one of the more populous States, then it could justly be claimed that the property in Indiana was equally valuable with that in the more populous State. In other words, the precise illustration which is found in the opinion of this Court in the case of Cleveland, Cincinnati Chicago and St. Louis Ry. Co. vs. Backus, as delivered by Mr. Justice **Brewer**, as instancing how the use of property determines its value, is entirely applicable to the inequality of which the plaintiff in error complains in the case at bar. Mr. Justice **Brewer** says (154 U. S., 446):

> "Take for illustration, property whose sole use is for purposes of inter-state commerce, such as the bridge over the Ohio between the States of Kentucky and Ohio. From that springs its entire value. Can it be that it is on that account entirely relieved from the burden of State taxation? Will it be said that the

taxation must be based simply on the cost, when never was it held that the cost of a thing is the test of its value ? Suppose there be two bridges over the Ohio, the cost of the construction of each being the same, one between Cincinnati and Newport and another twenty miles below, and where there is nothing but a small village on either shore. The value of the one will, manifestly, be greater than that of the other, and that excess of value will spring solely from the larger use of the one than of the other."

What is here so clearly stated by the learned Justice with reference to the bridges, is a fact (as shown by the record in this case) as to the comparative value of different parts of the property constituting the telegraph system of the plaintiff in error. The complaint of the plaintiff in error in this case is that the telegraph line of smaller use, and hence of smaller value, has had affixed to it a value equal to that of larger use. *This is an admitted fact on the record*! It is as though in the case of two bridges costing the same and yet the one in Ohio worth twice the one in Indiana, yet because both are owned by the same person their values are taken together and the values of the two averaged. In the case at bar the error is increased over that which would result from such an operation because there are elements of diverse cost still further aggravating the inequality.

In thus taxing the property of the plaintiff in error, the State Board of Tax Commissioners followed the plain provisions (Section 7, quoted *supra*) of the Statute of March 6, 1893, which were that, in ascertaining the true cash value of the entire property of the plaintiff in error, they were to take the aggregate market value of all the shares of capital stock first, and then to add to the true cash value thus obtained the aggregate amounts of any mortgage upon the property, and "the result *shall* be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation."

In the Delaware R. R. Co. Tax Case (18 Wall.), it is stated by Mr. Justice **Field**, in the opinion, at page 230, that,

> "if the ratio of the value of the property in Delaware to the value of the whole property of the company be less than that which the length of the road in Delaware bears to its entire length, and such is admitted to be the fact, a tax imposed upon the property in Delaware, according to the ratio of the length of its road to the length of the whole road, must necessarily fall upon property out of the State."

It is to be noted in this connection that in none of the cases cited in the briefs of the defendant in error which have been before this Court has the precise question which arises on the present record been presented for the consideration of the Court. In all the mileage apportionment cases which this Court has heretofore considered there has been no attempt to show a state of facts such as is presented in the record in this case.

In the *State Railroad tax cases*, in 92 U. S., the question was as to the apportionment *within the State of Illinois* of the valuation of the property and franchises of a *domestic* corporation, and the question there involved was as to the propriety of apportioning among the several subdivisions of the State in proportion to the mileage within those subdivisions the valuation of the real estate and the rolling stock of the railroad in view of certain provisions of the Constitution of the State of Illinois. In the earlier case of the Delaware Railroad tax (18 Wall., *supra*) the question was likewise as to the propriety of the State of Delaware adopting a mileage apportionment of the valuation of the Philadelphia, Wilmington and Baltimore R. R. Co., a corporation of the States of Pennsylvania, Delaware and Maryland. In the latter case, as Mr. Justice **Field** observed, if it had appeared that the valuation of the line in the State of Delaware was clearly less than the valuation in the States of Pennsylvania and Maryland, there would have been great difficulty in sustaining the tax; but no such attempt or suggestion appears in the case. In the present case it is admitted on the record that the valuation in Indiana is less than the average valuation of the whole line. No such state of facts appeared in the case of *Western Union Telegraph Company vs. Massachusetts*, in 125 and 141 U. S., *supra;* or in the case of *Pullman Palace Co. vs. Pennsylvania*, 141 U. S., where the rolling stock was apportioned to the State of Pennsylvania in the proportion which the mileage of the routes traversed by the cars within the State bore to the entire line over which the cars were run. There was no pretense in any of these cases, nor in any of the other cases in which a mileage apportionment was upheld, that any inequality in the value of the properties apportioned existed, as exists in the case at bar. The nearest suggestion to it occurs in the opinion of this Court in *Pittsburgh, &c., Ry. Co. vs. Backus* (154 U. S., 431), where this language is used:

> " It is true there may be exceptional cases, and the testimony offered on the trial of this case in the Circuit Court tends to show that this complainant's road is one of such exceptional cases; as, for instance, where the terminal facilities in some large city are of enormous value and so give to a mile or two in such city a value out of all proportion to any similar distance elsewhere along the line of the road, or where in certain localities the company is engaged in a particular kind of business requiring for sole use in such localities an

extra amount of rolling stock. If the testimony to this effect was presented by the company to the state board it must be assumed in the absence of anything to the contrary, that such board, in making the assessment of track and rolling-stock within the State, took into account the peculiar and large value of such extra facilities and rolling-stock."

In the case at bar not only does it appear that there existed with respect to the property of the plaintiff in error such an exceptional case as the Court had in mind when delivering the above opinion, but it also appears of record that this fact was brought to the notice of the State Board, and that the State Board refused to take it into account. Under the statute it had no discretion to do otherwise. The report of the plaintiff in error upon which said State Board proceeded to make the assessment clearly states the facts as to the value of the lines within the State of Indiana and without. The average of earnings, both without and within the State, showed the entire system of the plaintiff in error averaging $32 per mile of wire of gross receipts, while in the State of Indiana, taken separately, the average is only $14 ; and the net earnings of the entire system average $10 per mile of wire, yet in Indiana they do not exceed $4 per mile of wire ; and, upon the basis of the Stock Exchange prices of the few shares of stock sold upon the Exchange, the apportionment of values for taxation to Indiana would involve the payment of a tax of fifty per cent. of the net earnings within the State of Indiana. The admitted allegations of the bill are that the report brought to the attention of the State Board of Tax Assessors these facts, which are repeated in the bill and admitted by the demurrer. They were, however, entirely ignored by said board, which proceeded in accordance with Section 7 of the law to ascertain the cash valuation of the entire property by taking the value of the shares dealt in on the Stock Exchange market in New York City, and dividing such aggregate value of the shares of the capital stock of the plaintiff in error by the total number of miles of telegraph owned by the plaintiff in error, and thus obtaining an average mileage value. And thereupon the Board of Tax Commissioners multiplied such average mileage value by the number of miles of telegraph belonging to the plaintiff in error in the State of Indiana, and thus obtained a valuation "grossly excessive and far beyond the true cash value "of complainant's said property in Indiana" (Record, p. 12).

It is admitted of record that the valuation now complained of was reached in this way; that is to say, by taking the market value of the shares, &c., in the mode prescribed by Section 7 of the act. If this mode is unlawful because the statute prescribes an unlawful rule or allows the Board of Tax Commissioners to adopt an unlawful rule, and an unfair and unjust result was thus reached, it is no answer to this case to say that under the statute (as construed by the Supreme Court of the State) the Board of Tax Commissioners *might* have pursued (but did not) another mode which would not be open to any constitutional objection, or produce an unjust result.

The case at bar is distinguishable from and not controlled by the Indiana Railway cases (Railway Co. Backus, 154 U. S.).

The Supreme Court of Indiana, in its opinion, as well as the Attorney-General of the State in his argument in this Court in the case at bar, relies on the decision of this Court in the case of the *Railway Company vs. Backus* (154 U. S.) as controlling the decision of the case at bar. This, we submit, is a misconception. The case at the bar is distinguishable from the *Backus case* in the following decisive and controlling elements: 1st. As we have above pointed out (see *ante*, p. 2), the element of Federal franchise was not present in the Backus case, since the corporations therein affected were domestic corporations, and it was competent for the State of Indiana to tax their franchises as well as their property; whereas, in the present case, it was not competent under the Act of Congress of July 24, 1866, and the decisions of this Court, for the State of Indiana either to tax the "Federal franchises" of the Western Union Telegraph Company or to include their value in an assessment of the "property" of the company. OBSERVE that the legal status of the Western Union Company is peculiar. It derives no franchises from the State of Indiana. It enters into that State and conducts its business therein *as of right*, under the authority of the Act of Congress of July 24, 1866, and its acceptance thereof (see *Pensacola Telegraph case*, 96 U. S., 1; also, Appendix to our Brief in case No. 341). It is therefore not competent for the State of Indiana to levy any license tax or personal tax of any character against the Western Union Telegraph Company, unless, in the language of this Court in *Postal Telegraph Co. vs. Adams* (155 U. S., 688, 695), the amount of such tax is "made dependent on the fact of the value of its property situate in the State, the exaction not being susceptible of exceeding the sum which might be leviable directly thereon."

2d. The tax in the *Backus case* was sustained in this Court on the ground that on the record in that case this Court said it was bound to presume that the valuation of the property of the railway companies in the State of Indiana, as fixed by the State Board of Tax Commissioners, did not exceed its fair value; whereas, in the case at bar, it is admitted on the record, as above shown, that the assessment was "grossly excessive, and far beyond the true cash value of complainant's said property in Indiana." The record shows the grounds of this statement. We have, therefore, in this case two new elements or factors not in any previous case *relating to the taxation of telegraph companies:* 1st. The inclusion by the State of the value of a Federal franchise on the taxation of the property of a Federal agency. 2d. By such inclusion the amount of the assessment is affirmatively shown to exceed "the sum which might have been levied directly" upon such property.

III.

The mode prescribed or allowed by the Statute, Section 7 of the Act of March 9, 1893 (quoted *ante*, p. 3), **viz., the market value of its shares, &c., for ascertaining the true cash valuation of the entire property of the plaintiff in error, which mode it is admitted on the record was followed by the Tax Commissioners of Indiana in arriving at the assessment now complained of, is a mode under which, as applied to the plaint-**

iff in error, it is legally impossible that it should result in ascertaining the true cash value of the property of the plaintiff in error within the State of Indiana, and therefore such assessment upon the plaintiff in error (which is a Federal agency and engaged in interstate commerce), is in violation of the commerce clause of the Constitution and of the Fourteenth Amendment thereto.

The arugment in support of this proposition has already been given and the authorities cited.

(A) It is *legally impossible* that the market value of the shares represents alone the value of the "property" of the company. It represents all the assets of the company, including not only its plant but all outside property, and also its franchises and good-will.

(B) The mortgage debts of the company in this case, as shown in the report made part of the bill and admitted by the demurrer, is $9,120,845, which amount the statute (Sec. 7) direct to be added *at its face or par amount* to the market value of the aggregate shares of stock, "and the result *shall* be deemed and treated as the true cash value of the property of such association" (Sec. 7).

This erroneously and conclusively assumes that a mortgage represents existing property values equal to the face or par amount of the mortgage.

This cannot be a sound rule, and has been expressly decided to be unsound by the Court of Appeals in New York in the case of People vs. Barker, 146 N. Y.,

304. We refer the Court on this point to the extract from the opinion of the Court of Appeals in that case above quoted *(ante*, p. 16*)*.

The assessment in this case is alleged in the bill and admitted by the demurrer to have been ascertained by applying the rule prescribed by the statute (Record, pp. 11, 12, 13).

If the mileage basis for ascertaining the proportion of values in a given State of a corporation engaged in interstate transportation or commerce is to be maintained, it is fundamental that the statute shall not prescribe or allow a basis to be adopted under which constructive values shall be reached, which fall upon or include property or values out of the State.

If this vital point be not vigilantly guarded by this Court against the greed and rapacity of the States, you arm them with the power to destroy the instrumentalities of interstate commerce, and also to destroy or render valueless the agencies of the Federal Government within the States.

For these reasons as well as upon the grounds stated in the brief of Mr. ALPHEUS H. SNOW, our associate counsel, we submit that the judgment of the Supreme Court of Indiana should be reversed.

JOHN F. DILLON and RUSH TAGGART,
For the Western Union Telegraph Company,
the Plaintiff in Error.

OCTO [illegible]

WILLIAM M. [illegible]

THE PACIFIC [illegible]

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